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CIGARETTE LABELING AND ADVERTISING

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

SECOND SESSION

ON

BILLS REGULATING THE LABELING AND ADVERTISING OF CIGARETTES AND RELATING TO HEALTH PROBLEMS ASSOCIATED WITH SMOKING

JUNE 23, 24, 25, 29, AND JULY 2, 1964

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Committee on Interstate and Foreign Commerce

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CIGARETTE LABELING AND ADVERTISING

TUESDAY, JUNE 23, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order. This morning the committee initiates hearings on the bills that have been referred to this committee dealings with the tobacco problem, and primarily with the smoking of tobacco products. In general, these bills provide controls on the labeling of cigarettes, in some cases by conferring power on executive branch agencies to regulate advertising and labeling, in other cases by specifying information which must be contained on the labeling. One bill would provide for an informational and educational program, and for research into health problems associated with smoking.

Among these several bills there are various approaches suggested by our colleagues in the House. This is a very important subject. It is a subject on which many people become quite emotional because it involves health. It is a subject which the business community of the country is tremendously interested and concerned about. The Federal State and local governments are concerned because of the tax problem involved.

On June 7, 1962, the Surgeon General announced the establishment of a high-level technical committee who had expertise in this problem. Their job was to undertake a comprehensive review of the data on smoking and health, and the President, on the same day, but a later hour, at a press conference, acknowledged and approved the action of the Surgeon General in setting up such a committee.

This very distinguished Committee was appointed, and issued its report on January 11, 1964. The report reviewed studies that had been made over the years dealing with the relationship between smoking and health and indicates there appears to be a statistical correlation between smoking and certain diseases, primarily lung and other cancers, and certain cardiovascular disorders.

Since the release of the report of the Advisory Committee there has been a great deal of activity in the tobacco industry. The industry has established on a voluntary basis, a czar, or what would amount to a czar, to supervise the advertising of tobacco products. A grant has been made of some $10 million to the American Medical Association to conduct research into medical problems associated with the use of tobacco. The Federal Trade Commission recently completed hearings

on proposed trade regulations governing advertising and labeling of cigarettes. This committee has been importuned since the issuance of the report to conduct hearings and go into the matter because so many feel that it is a matter that requires legislation.

Our responsibilities, therefore, make it important that we look into the questions raised as a result of all of these events, not only because of the jurisdiction of this committee, but also because it is contended this problem vitally affects the public health of the country. Tobacco is grown in 21 States. There are over 500 industries, some rather susbtantial, in which nearly a hundred thousand people are employed in 30 States, engaged in the manufacture of tobacco products. There are about a million and a half businesses in this country that share in the tobacco trade. Over 28 percent of the tobacco leaf sold in the free world markets in 1963 was exported from the United States. I am told that some 505 million pounds of tobacco was exported with a value of over $400 million.

In 1936 there were 70 million Americans who bought tobacco products, at a cost of approximately $8 billion. I think it is generally known that over $2 billion of this sum went on to the Federal Government in taxes, over a billion dollars went to the State governments, and millions of dollars went to municipal governments. I mention this to show the far-reaching implications of this subject. The bills that have been introduced and referred to us are as follows:

H.R. 3610, by Mr. Thomson of Wisconsin; H.R. 4168, by Mr. Fino of New York; H.R. 5973, by Mr. Udall of Arizona; H.R. 7476, by Mr. Grabowski of Connecticut; H.R. 9512, by Mr. Rhodes of Arizona; H.R. 9655, by Mr. Blatnik of Minnesota; H.R. 9657, by Mr. Dingell of Michigan; H.R. 9668, by Mr. Blatnik of Minnesota; H.R. 9693, by Mr. Fino of New York; H.R. 9808, by Mr. Riehlman of New York; and H.R. 11671, by Mr. Rogers of Texas.

(The bills referred to follow:)

[H.R. 3610, 88th Cong., 1st sess.]

A BILL To require disclosure of the effectiveness of filters on cigarettes distributed in commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) for the purposes of section 5 of the Federal Trade Commission Act (38 Stat. 719 as amended; 15 U.S.C. 45), the manufacture for distribution in commerce of any cigarettes which are misbranded shall be an unfair method of competition.

(b) The provisions of sections 4, 5, 6, 8, 9, and 10 of the Federal Trade Commission Act shall apply to any proceeding for the enforcement of this Act to the same extent and with the same effect as any proceeding for the enforcement of section 5 of that Act.

(c) Cigarettes shall be considered to be misbranded unless each package or container in which they are offered for sale to consumers bears a clear and distinct label, prepared in compliance with regulations which shall be prescribed by the Federal Trade Commission, which specifies—

(1) the nicotine content and tar content of the mainstream smoke per cigarette; and

(2) the degree to which the nicotine content and the tar content of the smoke of each cigarette has been reduced by any filter device attached thereto or incorporated therein.

(d) "Mainstream smoke per cigarette" means the smoke which would enter the smoker's mouth while smoking one cigarette under standard smoking conditions, as determined by the Commission.

SEC. 2. Any person who willfully moves, alters, or renders illegible any label prescribed by this Act, prior to the time that the cigarettes are purchased by the consumer, shall be fined not more than $1,000, or imprisoned not more than one year.

[H.R. 4168, 88th Cong., 1st sess.]

A BILL To provide that cigarettes sold in interstate commerce shall be packaged and marked so as to show the nicotine content and the tar content of the cigarettes in each package

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Cigarette Labeling Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "commerce" means commerce among the several States or with foreign nations, or in any territory of the United States or in the District of Columbia, or between any such territory and another, or between any such territory and any State or foreign nation or between the District of Columbia and any State or territory or foreign nation.

(2) The term "territory" includes the insular possessions of the United States, the Commonwealth of Puerto Rico, and any territory of the United States.

PROHIBITED TRANSACTIONS

SEC. 3. (a) For the purposes of this Act, cigarettes shall be considered to be misbranded unless they are in a package or other container on which is clearly indicated, in compliance with regulations prescribed under section 4(c) the nicotine content and the tar content of the total number of cigarettes in the package or other container.

(b) The introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any cigarettes which are misbranded within the meaning of this Act as unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(c) This section shall not apply to any common carrier, contract carrier, or freight forwarder in respect of any cigarettes shipped, transported, or delivered for shipment in commerce in the ordinary course of business.

ADMINISTRATION AND ENFORCEMENT

SEC. 4. (a) This Act shall be enforced by the Federal Trade Commission under rules, regulations, and procedures provided for in the Federal Trade Commission Act.

(b) The Commission is authorized and directed to prevent any person from violating the provisions of section 3 of this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act; and any such person violating any provision of section 3 of this Act shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) The Commission is authorized and directed to prescribe such rules and regulations as may be necessary and proper for purposes of administration and enforcement of this Act.

(d) The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any cigarettes which it has reason to believe fall within the prohibitions of this Act; and

(2) cooperate on matters related to the purposes of this Act with any department or agency of the Government; with any State, territory, or possession or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

EFFECTIVE DATE

SEC. 5. This Act shall take effect on the date of its enactment, except that section 3(b) shall take effect ninety days after the date of enactment.

[H.R. 5973, 88th Cong., 1st sess.]

A BILL To amend the Federal Food, Drug, and Cosmetic Act so as to make that Act applicable to smoking products

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end thereof the following:

"(v) The term 'smoking product' means any cigarette, made with tobacco or any other substance, cigar made with tobacco or other substance, or tobacco or any other substance intended for smoking in a pipe."

SEC. 2. The Federal Food, Drug, and Cosmetic Act is further amended by inserting immediately after chapter VI the following new chapter:

"CHAPTER VIA—SMOKING PRODUCTS

"ADULTERATED SMOKING PRODUCTS

"SEC. 651. A smoking product shall be deemed to be adulterated—

"(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under customary or usual conditions of use;

"(2) if it consists in whole or in part of any filthy, putrid, or decomposed substance;

"(3) if it has been prepared, packed, or held under unsanitary conditions whereby it may have been contaminated or whereby it may have been rendered injurious to health; or

"(4) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

"MISBRANDED SMOKING PRODUCTS

"SEC. 652. A smoking product shall be deemed to be misbranded—

"(1) if its label is false or misleading in any particular;

"(2) if in package form unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the contents in terms of weight, measure, or numerical count, except that under this clause (B) reasonable variation shall be permitted, and exemptions as to small packages may be established by regulations prescribed by the Secretary;

"(3) If any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

"(4) if its container is so made, formed, or filled as to be misleading.

"REGULATIONS MAKING EXEMPTIONS

"SEC. 653. The Secretary shall promulgate regulations exempting from any labeling requirements of this Act smoking products which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed under conditions that such smoking products are not adulterated or misbranded under the provisions of this Act upon removal from such processing, labeling, or repacking establishment."

SEC. 3. Chapter III of the Federal Food, Drug, and Cosmetic Act is amended by striking out "food, drug, device, or cosmetic" each place where it appears therein and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

SEC. 4. (a) Section 702(b) of the Federal Food, Drug, and Cosmetic Act is amended by striking out "food, drug, or cosmetic" and inserting in lieu thereof "food, drug, cosmetic, or smoking product".

(b) Section 703 of such Act is amended by striking out "food, drugs, devices, or cosmetics" both places where it appears therein and inserting in lieu thereof "food, drugs, devices, cosmetics, or smoking products", and by striking out "food, drug, device, or cosmetic" both places where it appears therein and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

(c) Section 104(a) of such Act is amended by striking out "food, drugs, devices, or cosmetics" both places where it appears therein and inserting in lieu thereof "food, drugs, devices, cosmetics, or smoking products".

(d) Section 704(b) of such Act is amended by striking out "food, drug, device, or cosmetic" and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

(e) Section 705(b) of such Act is amended by striking out "food, drugs, devices, or cosmetics" and inserting in lieu thereof "food, drugs, devices, cosmetics, or smoking products".

(f) Section 801(a) of such Act is amended by striking out "food, drugs, devices, and cosmetics" and inserting in lieu thereof "food, drugs, devices, cosmetics, and smoking products".

(g) Section 801(b) of such Act is amended by striking out "food, drug, device, or cosmetic" and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

(h) Section 801(d) of such Act is amended by striking out "food, drug, device, or cosmetic" and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

SEC. 5. The amendments made by this Act shall apply with respect to all smoking products manufactured after the day after the date of enactment of this Act.

[H.R. 7476, 88th Cong., 1st sess.]

A BILL To require that packages of cigarettes shipped in commerce bear a warning that they may be dangerous to health

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no manufacturer of cigarettes shall introduce or deliver for introduction in commerce any cigarettes, unless the package containing such cigarettes has on it a clear, legible, and plainly visible warning as follows: "WARNING—CONTENTS MAY BE DANGEROUS TO HEALTH". Such warning shall be printed on the outside container or wrapper of each individual package in which the cigarettes are usually sold to the ultimate consumer (whether such packages are sold individually or in a carton or case containing more than one package), or shall be printed in such a manner as to be legible through such outside container or wrapper.

SEC. 2. No person shall alter, mutilate, destroy, obliterate, or remove all or part of the printed matter required by the first section of this Act while any package bearing such printed matter is held for sale (whether or not the first sale) after shipment in commerce.

SEC. 3. Any person who violates any provision of the first section or section 2 of this Act shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

SEC 4. As used in this Act—

(1) The term "cigarette" means any roll of tobacco wrapped in paper or any other material other than tobacco.

(2) The term "manufacturer of cigarettes" means any person who produces cigarettes, except for his personal consumption.

(3) The term "commerce" means (A) commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, and any place outside thereof, and (B) commerce within the District of Columbia or any possession of the United States.

SEC. 5. This Act shall apply with respect to all cigarettes manufactured more than sixty days after the date of enactment of this Act.

[H.R. 9512, 88th Cong., 1st sess.]

A BILL To amend the Federal Food, Drug, and Cosmetic Act so as to make that Act applicable to smoking products

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end thereof the following:

"(v) The term 'smoking product' means any cigarette, made with tobacco or any other substance, cigar made with tobacco or other substance, or tobacco or any other substance intended for smoking in a pipe."

SEC. 2. The Federal Food, Drug, and Cosmetic Act is further amended by inserting immediately after chapter VI the following new chapter:

"CHAPTER VI–A—SMOKING PRODUCTS

"ADULTERATED SMOKING PRODUCTS

"SEC. 651. A smoking product shall be deemed to be adulterated—

"(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under customary or usual conditions of use;

"(2) if it consists in whole or in part of any filthy, putrid, or decomposed substance;

"(3) if it has been prepared, packed, or held under unsanitary conditions whereby it may have been contaminated or whereby it may have been rendered injurious to health; or

"(4) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

"MISBRANDED SMOKING PRODUCTS

"SEC. 652. A smoking product shall be deemed to be misbranded—

"(1) if its label is false or misleading in any particular;

"(2) if in package form unless it bears a label containing (A) the name and place of business of the manufacturer, packer, or distributor; and (B) an accurate statement of the contents in terms of weight, measure, or numerical count, except that under this clause (B) reasonable variation shall be permitted, and exemptions as to small packages may be established by regulations prescribed by the Secretary;

"(3) if any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

"(4) if its container is so made, formed, or filled as to be misleading.

"REGULATIONS MAKING EXEMPTIONS

"SEC. 653. The Secretary shall promulgate regulations exempting from any labeling requirements of this Act smoking products which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed under conditions that such smoking products are not adulterated or misbranded under the provisions of this Act upon removal from such processing, labeling, or repacking establishment."

SEC. 3. Chapter III of the Federal Food, Drug, and Cosmetic Act is amended by striking out "food, drug, device, or cosmetic" each place where it appears therein and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

SEC. 4. (a) Section 702(b) of the Federal Food, Drug, and Cosmetic Act is amended by striking out "food, drug, or cosmetic" and inserting in lieu thereof "food, drug, cosmetic, or smoking product".

(b) Section 703 of such Act is amended by striking out "food, drugs, devices, or cosmetics" both places where it appears therein and inserting in lieu thereof "food, drugs, devices, cosmetics, or smoking products", and by striking out "food, drug, device, or cosmetic" both places where it appears therein and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

(c) Section 704(a) of such Act is amended by striking out "food, drugs, devices, or cosmetics" both places where it appears therein and inserting in lieu thereof "food, drugs, devices, cosmetics, or smoking products".

(d) Section 704(b) of such Act is amended by striking out "food, drug, device, or cosmetic" and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

(e) Section 705(b) of such Act is amended by striking out "food, drugs, devices, or cosmetics" and inserting in lieu thereof "food, drugs, devices, cosmetics, or smoking products".

(f) Section 801(a) of such Act is amended by striking out "food, drugs, devices, and cosmetics" and inserting in lieu thereof "food, drugs, devices, cosmetics, and smoking products".

(g) Section 801(b) of such Act is amended by striking out "food, drug, device, or cosmetic" and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

(h) Section 801(d) of such Act is amended by striking out "food, drug, device, or cosmetic" and inserting in lieu thereof "food, drug, device, cosmetic, or smoking product".

SEC. 5. The amendments made by this Act shall apply with respect to all smoking products manufactured after the day after the date of enactment of this Act.

[H.R. 9655, 88th Cong., 2d sess.]

A BILL To confer upon the Federal Trade Commission the power and duty to regulate the advertising and labeling of cigarettes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Cigarette Advertising and Labeling Act".

FINDINGS OF FACT

SEC. 2. The Congress hereby finds and declares that the unrestricted promotion and advertising of cigarettes in interstate commerce, in the light of the conclusive evidence that cigarette smoking is injurious to health, constitutes a grave threat to the public welfare.

DECLARATION OF POLICY

SEC. 3. It is therefore the policy of the Congress, and the purpose of this Act—

(a) to require that cigarette packages contain a warning that habitual smoking of cigarettes is injurious to health,

(b) to require that each cigarette package disclose the average yields of incriminated agents (as defined in section 4(f)) from the cigarettes contained therein, and

(c) to eliminate cigarette advertising that tends to make cigarette smoking attractive to children.

DEFINITIONS

SEC. 4. As used in this Act—

(a) The term "cigarette" means any roll of tobacco, wrapped in paper or any substance other than tobacco.

(b) The term "Commission" means the Federal Trade Commission.

(c) The term "Federal Trade Commission Act" means the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended.

(d) The term "commerce" means commerce between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof: or within any territory or possession or the District of Columbia.

(e) The term "United States" means the several States, the District of Columbia, and the territories and possessions of the United States.

(f) The term "incriminated agent" means any substance found in cigarette smoke which, as determined by the Commission, tends to contribute to the medical hazards of smoking.

FALSE ADVERTISING AND LABELING OF CIGARETTES

SEC. 5. (a) The Federal Trade Commission, with the cooperation of the Secretary of Health, Education, and Welfare, shall establish such standards and requirements for the labeling and advertising of cigarettes which are in commerce as it may deem necessary to protect the public health.

(b) Such standards and requirements for the labeling of cigarettes shall include the requirement that each package or container in which cigarettes in commerce are offered for sale to consumers bear a clear and distinct label which—

(1) contains the following words: "Caution—Habitual Smoking Is Injurious to Health"; and

(2) sets forth the average yield, or other index, of each incriminated agent to be found in the smoke of the cigarettes contained in such package or container.

(c) Such standards and requirements with respect to the advertising of cigarettes shall—

(1) provide that each cigarette advertisement contain the following warning: "Caution—Habitual Cigarette Smoking Is Injurious to Health"; and

(2) provide for the elimination of all advertising matter which tends to make cigarette smoking attractive to children.

(d) Any cigarette package or container or any advertisement of cigarettes which fails to comply with the standards and requirements established by the Commission under the preceding subsections of this section shall be deemed to be a false advertisement of drugs for the purposes of sections 12, 13, 14, and 15 of the Federal Trade Commission Act (38 Stat. 719; 15 U.S.C. 52, 53, 54, and 55), as amended, and the Commission shall have the duty and authority to proceed with respect to any such false advertisement in the same manner and to the same extent as with respect to other false advertisements of drugs which are unlawful under the Federal Trade Commission Act.

[H.R. 9657, 88th Cong., 2d sess.]

A BILL To confer upon the Federal Trade Commission the power and duty to regulate the advertising and labeling of cigarettes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Cigarette Advertising and Labeling Act".

FINDINGS OF FACT

SEC. 2. The Congress hereby finds and declares that the unrestricted promotion and advertising of cigarettes in interstate commerce, in the light of conclusive evidence that cirgarette smoking is injurious to health, constitutes a grave threat to the public welfare.

DECLARATION OF POLICY

SEC. 3. It is therefore the policy of the Congress, and the purpose of this Act—

(a) to require that cigarette packages contain a warning that habitual smoking of cigarettes is injurious to health,

(b) to require that each cigarette package disclose the average yields of incriminated agents (as defined in section 4(f)) from the cigarettes contained therein, and

(c) to eliminate cigarette advertising that tends to make cigarette smoking attractive to children.

DEFINITIONS

SEC. 4. As used in this Act—

(a) The term "cigarette" means any roll of tobacco, wrapped in paper or any substance other than tobacco.

(b) The term "Commission" means the Federal Trade Commission.

(c) The term "Federal Trade Commission Act" means the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes", approved September 26, 1914, as amended.

(d) The term "commerce" means commerce between any State, territory, or possession of the United States, or the District of Columbia, and any place outside thereof; or between points within the same State, territory, or possession, or the District of Columbia, but through any place outside thereof; or within any territory or possession or the District of Columbia.

(e) The term "United States" means the several States, the District of Columbia, and the territories and possessions of the United States.

(f) The term "incriminated agent" means any substance found in cigarette smoke which, as determined by the Commission, tends to contribute to the medical hazards of smoking.

FALSE ADVERTISING AND LABELING OF CIGARETTES

SEC. 5. (a) The Federal Trade Commission, with the cooperation of the Secretary of Health, Education, and Welfare, shall establish such standards and requirements for the labeling and advertising of cigarettes which are in commerce as it may deem necessary to protect the public health.

(b) Such standards and requirements for the labeling of cigarettes shall include the requirement that each package or container in which cigarettes in commerce are offered for sale to consumers bear a clear and distinct label which—

(1) contains the following words: "Caution—Habitual Smoking Is Injurious to Health";

(2) sets forth the average yield, or other index, of each incriminated agent to be found in the smoke of the cigarettes contained in such package or container; and

(3) includes such other information as the Commission deems necessary to carry out the purposes of this Act.

(c) Such standards and requirements with respect to the advertising of cigarettes shall—

(1) provide that each cigarette advertisement contain the following warning: "Caution—Habitual Cigarette Smoking Is Injurious to Health";

(2) provide for the elimination of all advertising matter which tends to make cigarette smoking attractive to children; and

(3) include such other information as the Commission deems necessary to carry out the provisions of this Act.

(d) Any cigarette package or container or any advertisement of cigarettes which fails to comply with the standards and requirements established by the Commission under the preceding subsections of this section shall be deemed to be a false advertisement of drugs for the purposes of sections 12, 13, 14, and 15 of the Federal Trade Commission Act (38 Stat. 719; 15 U.S.C. 52, 53, 54, and 55), as amended, and the Commission shall have the duty and authority to proceed with respect to any such false advertisement in the same manner and to the same extent as with respect to other false advertisements of drugs which are unlawful under the Federal Trade Commission Act.

[H.R. 9668, 88th Cong., 2d sess.]

A BILL To bring under control the health hazards produced by the smoking of cigarettes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Cigarette Health Hazards Act."

FINDINGS OF FACT

SEC. 2. The Congress hereby finds and declares that the smoking of cigarettes, as presently processed and offered for sale, constitutes a grave hazard to the public health.

DECLARATION OF POLICY

SEC. 3. It is therefore the policy of the Congress, and the purpose of this Act—

(a) to enjoin all departments, agencies, and instrumentalities of the Government from taking any action or pursuing any policy which encourages the public, or any segment thereof, to buy or use cigarettes, or which in any way promotes the sale or use of cigarettes;

(b) publicize, and to educate the public to, the health hazards involved in the use of cigarettes; and

(c) to provide for the expansion of research for the purpose of (1) identifying, measuring, and evaluating the nature and kind of substances found in cigarette smoke, (2) determining the mechanisms by which these substances affect human health, (3) advancing knowledge with respect to the behavioral aspects of the smoking habit, (4) developing the means of eliminating or reducing the hazards of smoking, and (5) aiding individuals to control the smoking habit.

IMPLEMENTATION OF POLICY

SEC. 4. The Secretary of Health, Education, and Welfare is authorized and directed to—

(1) implement the policy set forth in section 3, and coordinate the activities of other departments, agencies, and instrumentalities of the Government with respect to the implementation of such policy;

(2) conduct directly, through other agencies and instrumentalities of the Government, and through grants to public and nonprofit agencies and to individuals, research for the purposes of (A) identifying, measuring, and evaluating the nature and kind of substances found in cigarette smoke, (B) determining the mechanisms by which these substances affect human health, (C) advancing knowledge with respect to the behavioral aspects of the smoking habit, (D) developing the means of eliminating or reducing the hazards of smoking, and (E) aiding individuals to control the smoking habit;

(3) conduct an educational program to inform and educate the public to the health hazards involved in the smoking of cigarettes and to the means which they can employ to avoid or reduce such hazards; and, in the conduct of such a program, the Secretary shall be authorized to purchase space and time in commercial media; and

(4) conduct periodic surveys of smoking patterns in the United States with a view to determining the effectiveness of smoking control procedures, and report to the Congress on such surveys.

[H.R. 9693, 88th Cong., 2d sess.]

A BILL To provide that cigarettes sold in interstate and foreign commerce shall be packaged and marked so as to bear a warning that they may be dangerous to health and to show the nicotine and tar content of the cigarettes in each package

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Cigarette Labeling Act".

DEFINITIONS

SEC. 2. As used in this Act—

(1) The term "commerce" means commerce among the several States or with foreign nations, or in any possession of the United States or in the District of Columbia, or between any such possession and another, or between any such possession and any State or foreign nation, or between the District of Columbia and any State, possession, or foreign nation.

(2) The term "cigarette" means tobacco rolled in paper or any other material but tobacco.

PROHIBITED TRANSACTIONS

SEC. 3. (a) For the purposes of this Act, cigarettes shall be considered to be misbranded unless each individual package in which such cigarettes are usually sold to the ultimate consumer (whether such packages are sold individually or in a carton or a case containing more than one package) has printed on its outside the following in clear, legible, and plainly visible print: (1) The nicotine content and the tar content of the total number of cigarettes in the package and (2) "Warning—Contents May Be Dangerous to Health".

(b) The introduction, or manufacture for introduction, into commerce, or the sale, advertising, or offering for sale in commerce, or the transportation or distribution in commerce, of any cigarettes which are misbranded within the meaning of this Act is unlawful and shall be an unfair method of competition, and an unfair and deceptive act or practice, in commerce under the Federal Trade Commission Act.

(c) This section shall not apply to any common carrier, contract carrier, or freight forwarder in respect of any cigarettes shipped, transported, or delivered for shipment in commerce in the ordinary course of business.

ADMINISTRATION AND ENFORCEMENT

SEC. 4. (a) This Act shall be enforced by the Federal Trade Commission under rules, regulations, and procedures provided for in the Federal Trade Commission Act.

(b) The Commission is authorized and directed to prevent any person from violating the provisions of section 3 of this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act; and any such person violating any provision of section 3 of this Act shall be subject to the penalties and entitled to the privileges and immunities provided in said Federal Trade Commission Act as though the applicable terms and provisions of the said Federal Trade Commission Act were incorporated into and made a part of this Act.

(c) The Commission is authorized and directed to prescribe such rules and regulations as may be necessary and proper for purposes of administration and enforcement of this Act.

(d) The Commission is authorized to—

(1) cause inspections, analyses, tests, and examinations to be made of any cigarettes which it has reason to believe fall within the prohibitions of this Act; and

(2) cooperate on matters related to the purposes of this Act with any department or agency of the Government; with any State or possession or with the District of Columbia; or with any department, agency, or political subdivision thereof; or with any person.

EFFECTIVE DATE

SEC. 5. This Act shall take effect on the date of its enactment, except that section 3(b) shall take effect ninety days after the date of enactment.

[H.R. 9808, 88th Cong., 2d sess.]

A BILL To authorize the Federal Trade Commission to require that cigarette packages and cigarette advertisements bear cautionary statements, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Federal Trade Commission Act is amended by redesignating sections 17 and 18 as sections 18 and 19, respectively, and by inserting immediately after section 16 thereof the following:

"SEC. 17. (a) (1) The Commission may by regulation prescribe such cautionary statement or statements for inclusion in any advertisement of cigarettes and on any cigarette package as it may deem to be necessary in order to inform persons seeing or hearing any such advertisement or purchasing or otherwise obtaining a package of cigarettes of well-informed scientific opinion of the effect of cigarette smoking on human health.

"(2) The Commission may by regulation also prescribe that there be set forth on each cigarette package of each component of the cigarettes in such package which the Surgeon General of the Public Health Service determines is or is likely to be a carcinogenic agent and the amount thereof in such package when obtained by the ultimate consumer.

"(b) It shall be unlawful and an unfair method of competition and an unfair and deceptive act or practice in commerce for any person to—

"(1) introduce, deliver for introduction, sell, advertise, or offer for sale, in commerce, or import into the United States, any cigarette package containing one or more cigarettes, unless such package bears any statement or statements and other information which the Commission has prescribed to be on such a package pursuant to subsection (a) of this section or

"(2) to disseminate or cause to be disseminated by the United States mails or in commerce by any means any advertisement of cigarettes, unless such advertisement includes any statement or statements which the Commission has prescribed to be in such an advertisement pursuant to subsection (a) of this section.

"(c) As used in this section—

"(1) The term 'cigarette' means tobacco rolled in paper or in any other material which is not tobacco.

"(2) The term 'cigarette package' means a carton, package, box, or other container in which cigarettes are usually purchased or otherwise obtained by the ultimate consumer."

SEC. 2. The Surgeon General of the Public Health Service shall continuously compile and publish a list of all publications available from the Government Printing Office on and after the date of enactment of this section which relate to the effect of cigarette smoking on human health. The Surgeon General shall distribute periodically such list to colleges and universities and elementary and secondary schools in the United States and its possessions, together with a statement that not exceeding five copies of each such publication may be obtained from him without charge on request. Upon request therefor, the Surgeon General shall, without charge, provide each college and university and elementary or secondary school with not to exceed five copies of each publication on such list for use by their teachers and students.

[H.R. 11671, 88th Cong., 2d sess.]

A BILL To regulate the labeling and advertising of cigarettes, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Cigarette Labeling and Advertising Act".

SECTION 1. It shall be unlawful, and an unfair method of competition in commerce, and an unfair or deceptive act or practice in commerce, under the Federal Trade Commission Act, for any person to manufacture, import, or package for sale in commerce any package of cigarettes which does not bear a plainly legible warning as follows: "Caution: Cigarette Smoking May Be Hazardous to Your Health."

SEC. 2. The enactment of this Act shall constitute a preemption of the subject matter.

SEC. 3. This Act shall take effect one hundred and twenty days after the date of its enactment.

The CHAIRMAN. The reports on these bills which have been received will be included at this point in the record.

(The reports referred to follow:)

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 22, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget concerning various bills dealing with cigarettes and smoking products. This report covers H.R. 3610, H.R. 4168 (H.R. 9693 identical), H.R.

5973 (H.R. 9512 identical), H.R. 7476, H.R. 9655, H.R. 9657, H.R. 9668, and H.R. 9808.

H.R. 3610 and H.R. 5168 empower the Federal Trade Commission to require that cigarettes sold in interstate commerce be packaged and marked so as to show the nicotine and tar content of the cigarettes in each package. H.R. 3610 would also require the disclosure of the effectiveness of filters on cigarettes in reducing the nicotine and tar content of their smoke. H.R. 5973 would amend the Federal Food, Drug, and Cosmetic Act so as to make that act applicable to smoking products. H.R. 9668 would direct the Secretary of Health, Education, and Welfare to conduct appropriate research and educational programs for the control of health hazards produced by the smoking of cigarettes.

H.R. 7476, H.R. 9655, H.R. 9657, and H.R. 9808 would all require that packages of cigarettes bear a warning that cigarettes may be (or are) dangerous to health. The last three bills would specifically authorize the Federal Trade Commission to regulate advertising and labeling practices. H.R. 9808 would also require the Surgeon General, Public Health Service, to compile and publish a list of Government publications which relate to the effect of cigarette smoking on human health and periodically furnish said list to colleges and schools in the United States.

The agencies concerned are reporting to your committee their views on the foregoing bills and are pointing out the substantial research and educational efforts already underway and contemplated in this area. The Bureau of the Budget believes that additional efforts in the fields of research and education would be desirable.

The Department of Health, Education, and Welfare has indicated its intention to develop, and, after coordination within the executive branch, submit a specific legislative proposal in this area. The FTC, however, has initiated proceedings for the promulgation of trade regulations regarding unfair and deceptive acts or practices in advertising or labeling of cigarettes under existing law. Other agencies of the executive branch question whether new and aditional regulatory authority is needed at present.

In these circumstances, and while the objectives of the bills are obviously meritorious, we are unable to support their enactment at this time.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, June 22, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in the nature of an interim report on eight bills, relating to cigarettes and other smoking products, on which you have requested reports from this Department (H.R. 3610, H.R. 4168, H.R. 5973, H.R. 7476, H.R. 9655, H.R. 9668, H.R. 9693 and H.R. 9808) and on two bills (H.R. 9512 and H.R. 9657) which are included in the announcement of your forthcoming hearings and are identical with H.R. 5973 and H.R. 9655, respectively.

Of these bills, all are limited in their coverage to cigarettes, except two identical bills (H.R. 5973 and H.R. 9512) which would bring smoking products generally (i.e., cigarettes, cigars, and pipe tobacco) under the Food, Drug, and Cosmetic Act in a manner patterned generally after the provisions now governing cosmetics (except the special provisions on color additives and hair dyes). The bills may, further, be broadly classified as on the one hand those that are regulatory in character—including, in addition to the two just mentioned, several bills (mentioned below), to require cautionary or informative labeling or advertising of cigarettes—and on the other hand bills, or portions of bills, requiring intensification and expansion of research activitiy and of public education and information activity in the field of smoking and health. The most comprehensive of the latter bills is H.R. 9668, the Cigarette Health Hazards Act. Of the regulatory bills (other than the above-mentioned H.R. 5973 and H.R. 9657), two bills (the proposed Cigarette Advertising and Labeling Act, H.R. 9655 and H.R. 9657) would vest administrative responsibility for regulation of cigarette labeling and advertising in the Federal Trade Commission in accordance with standards to be

established with the cooperation of this Department. Administrative authority would likewise be placed in the Federal Trade Commission by H.R. 9808 (partly on the basis of carcinogenicity determinations made by the Surgeon General) over cigarette labeling and advertising, and by H.R. 3610 and H.R. 9693 (superseding H.R. 4168) over cigarette labeling, whereas H.R. 7476, simply making it a crime for a manufacturer to ship cigarettes unless the package bears a specific statutory warning, would not authorize administrative regulation or civil sanctions.

The basic objective of these bills—the elimination of a public health hazard caused by smoking—is one that the Department of Health, Education, and Welfare strongly supports. The Surgeon General's expert Advisory Committee on Smoking and Health, in its recent report which has been furnished to all members of the Committee, concluded on the basis of "prolonged study and evaluation of many lines of converging evidence" that "Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action" (p. 33), a conclusion with which we fully agree.

Some of the major findings and conclusions of the Advisory Committee on which this overall conclusion is based are as follows:

Cigarette smoking is associated with a 70-percent increase in the age-specific death rates of males.

In view of the continuing and mounting evidence from many sources, it is the judgment of the Committee that cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate.

In general, the greater the number of cigarettes smoked daily, the higher the death rate.

Cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs all other factors. The data for women, though less extensive, point in the same direction.

Evaluation of the evidence leads to the judgment that cigarette smoking is a significant factor in the causation of laryngeal cancer in the male.

Cigarette smoking is the most important of the causes of chronic bronchitis in the United States, and increases the risk of dying from chronic bronchitis.

A relationship exists between pulmonary emphysema and cigarette smoking but it has not been established that the relationship is causal. The smoking of cigarettes is also associated with an increased risk of dying from pulmonary emphysema.

Male cigarette smokers have a higher death rate from coronary artery disease than nonsmoking males. Although the causative role of cigarette smoking in deaths from coronary disease is not proven, the Committee considers it more prudent from the public health viewpoint to assume that the established association has causal meaning than to suspend judgment until no uncertainty remains.

Epidemiological studies indicate an association between cigarette smoking and peptic ulcer which is greater for gastric than for duodenal ulcer.

The overwhelming evidence points to the conclusion that smoking—its beginning, habituation, and occasional discontinuation—is to a large extent psychologically and socially determined.

The Advisory Committee's report was made public on January 11 of this year. On January 27, after review of the report by the Surgeon General from a scientific and technical standpoint, the Public Health Service announced its "full acceptance of the principal findings and conclusions of the report." The Department of Health, Education, and Welfare has accepted and adopted the Advisory Committee's report and findings. The Committee took pains to point out that its work was but the essential first phase—an objective assessment of the nature and magnitude of the health hazard—of a two-phase review of the problem of smoking and health, and that the second phase, an evaluation to determine "appropriate remedial action," was to be launched when a solid foundation for it was provided by the Committee's report. As said in the Committee's report:

"Recommendations for actions were not to be a part of the phase I Committee's responsibility. No decisions on how phase II would be conducted were to be made until the phase I report was available. It was recognized that different competencies would be needed in the second phase and that many possible recommendations for action would extend beyond the health field and into the purview and competence of other Federal agencies."

We have made considerable progress in this second phase and have developed programs of action as outlined below.

I. NONREGULATORY ACTION

A. Attack on the smoking habit through public and professional information and education

In addition to having widely distributed the Advisory Committee's report—including distribution to Members of Congress and the country's physicians—we have initiated, and are planning to expand as rapidly as our resources will permit, a greatly intensified long-range program of public and professional information and education (including research and demonstrations related thereto) on the hazards of cigarette smoking and on methods to combat and control the smoking habit. As we envision it, the program, insofar as directed to the lay public, will utilize the various communication media and will be largely, though by no means exclusively, focused on youth, in cooperation with educational agencies and school systems (including use of school curriculums) and with State health agencies and the various voluntary organizations that will increasingly be engaged in educational activities of this nature. To these ends we intend to utilize the following instrumentalities, among others:

1. A national clearinghouse on smoking and health, which is being established in the Public Health Service (as a unit of the Division of Chronic Diseases in the Bureau of State Services). This unit will (in addition to performing other functions referred to in this report) be the central point of coordination, information, and liaison in the Service for programs and activities in this field and, more specifically, will—

(i) Gather and bring together in one place all available information on the subject of smoking and health and disseminate such information on both a routine and special request basis;

(ii) Conduct and support professional education activities on smoking and health for physicians, dentists, nurses, and other health personnel, and studies to determine the influence of these professionals on their patients;

(iii) Serve as an information center on research and studies on smoking, and keep current the archives of the Advisory Committee on Smoking and Health;

(iv) Provide technical assistance and consultation, on all health matters related to smoking, to other Federal agencies, to State and local health agencies, and to voluntary and professional agencies; and

(v) Conduct and support urgently needed studies and demonstrations on how to influence individuals to refrain from initiating the smoking habit ("primary prevention"), and also appropriate studies and demonstrations on how to bring about discontinuation of the habit by smokers ("secondary prevention").

2. The Children's Bureau, pursuant to its basic mission to investigate and report on matters pertaining to the welfare of children and child life and, as prescribed by the Secretary, publish the results of its investigations—will develop a program of studies and informational and educational activities in the field of smoking as it affects children and youth. This will include an intensive effort to insure that young people understand the current and future problems incident to smoking, so that they will have the maximum opportunity to make wise individual choices. The Bureau plans to involve State committees on children and youth and State and local youth agencies in planning youth conferences and in serving as a national clearinghouse of information on techniques for holding such conferences. It also will develop a series of publications in this area directed toward both parents and youth. A step already taken in the light of the Advisory Committee's report was a national conference on smoking and youth held April 30–May 2, 1964, under the auspices of the Children's Bureau. This conference was based on the premise that youth themselves needed to reflect on the whole issue of smoking. The wide variety of opinions expressed by the youth showed their thoughtful approach to this subject. Illustrative were their concerns about parental influence, the peer group relationship, and smoking as a status symbol. A report on this conference has now been completed and is expected to provide valuable guidelines in future educational and interpretative areas about this emergent problem.

B. Disease control programs

The Public Health Service is taking steps to initiate programs to control diseases, such as chronic bronchitis and emphysema, that are known to be caused by or significantly associated with smoking and for which no control program

now exists. These would parallel the heart disease and cancer control programs, and their purpose would be to use existing and future knowledge emerging from research to alleviate the burden of these diseases.

C. Research and development

We have outlined above certain lines of study and investigation that, we believe, should be conducted or supported by the projected National Clearing House on Smoking and Health. There are others that are suited more appropriately to the functions of already established instrumentalities of the Department and should be conducted there, though the national clearinghouse will be responsible for keeping abreast of those investigations also in order to better serve its primary roles.

1. *National Institutes of Health.*—In addition to on-going research projects at, or under the aegis of, NIH bearing on smoking and health, it is planned to conduct or support through NIH—in coordination, where appropriate, with research planned by the Department of Agriculture—particularly through the National Cancer Institute and National Heart Institute, several types of research and investigation in an attempt to close some of the many important gaps in existing knowledge in this field identified in the report of the Advisory Committee, such as more complete information about the harmful constituents in tobacco smoke; the mechanisms by which tobacco smoke produces adverse health effects (including cancer) and how, if possible, these might be prevented; and more precise evidence or definition of the role of cigarette smoking in cardiac, circulatory, and pulmonary diseases.

2. *National Center for Health Statistics.*—The National Center for Health Statistics is considering several projects on smoking and health which would be incorporated into on-going programs to give regular and more comprehensive information on smoking habits, mortality trends, and on the diseases and disabilities associated with smoking.

D. Legislation

All of the above-mentioned activities could, we think, be carried out under basic authority of existing law, given sufficient funds and staff, though it should be noted that specific statutory authority may at any rate have to be sought for the disease control programs in view of the appropriation ceilings in the relevant provisions (secs. 314(c), 316) of the Public Health Service Act. We are, however, exploring the desirability of seeking more specific statutory authority, largely as an expression of congressional policy in this field. In this connection, we note that the proposed Cigarette Health Hazards Act (H.R. 9668) would specifically authorize and direct this Department to conduct or support certain important lines of research, conduct a program to inform and educate the public as to the health hazards of smoking and means to avoid or reduce such hazards, and conduct and report to Congress on periodic surveys of smoking patterns in this country with a view to determining the effectiveness of smoking control procedures. See, also, the provisions in H.R. 9808 for dissemination, by the Public Health Service, of lists of Government publications on the effect of cigarette smoking, and for the distribution of such publications, to schools, colleges, and universities.

II. REGULATORY ACTION

A. Regulation of labeling and advertising

This Department, as the major Federal agency charged with the protection of the public health and as the administrator of the Food, Drug, and Cosmetic Act, the Federal Hazardous Substances Labeling Act, and other consumer protection legislation, believes that labeling and advertising should, in general, serve not only as a medium of identification and market promotion of a product but should in the interest of honesty and fair dealing, neither mislead nor fail to give the consumer the information concerning the product that he needs in order to make an informed decision. This is especially so where the product has a potential for harm, and all the more so where children and young people are involved.

We do not share the view of those who assume that, since the health risks of smoking have been widely publicized, no useful function would be served by including an appropriate reminder of those risks in information to the consumer. We believe, rather, that not only specific warnings, but also other requirements to prevent misleading statements or omissions in such promotional material,

would help to round out the efforts by way of public information and education that we have outlined in this report. This is particularly true in view of the fact—a fact especially significant for young people—that, as stated in the Advisory Committee's report, the "overwhelming evidence indicates that smoking—its beginning, habituation, and occasional discontinuation—is to a very large extent psychologically and socialy determined." As said by the Federal Trade Commission in giving notice of proposed trade regulation rules for the advertising and labeling of cigarettes:

"The Commission has reason to believe that much current advertising suggests or portrays cigarette smoking as being pleasurable or desirable, compatible with physical health, fitness or well-being, or indispensable to full personal development and social success, without at the same time reminding the consumer of the serious health hazard of cigarette smoking. Such advertising may create a physchological and social barrier to the consuming public's understanding and appreciation of the gravity of the risks to life and health involved in cigarette smoking."

We are encouraged by, and welcome, the current effort of the industry at self-regulation, as evidenced in the recently announced cigarette advertising code agreed upon by the cigarette manufacturers, which also covers labeling and which includes not only a statement of standards but provisions for clearance with an independent code administrator by members of the voluntary system, and for pecuniary sanctions and publicity by the administrator against violators of the code. (We understand that the code has been submitted to the Antitrust Division of the Justice Department for review.) We believe that an adequate voluntary program might offer a reasonable solution to advertising problems, and we support efforts in this direction. We note, however, that the proposed code, though progressive in a number of ways, stops short of requiring an affirmative health-risk warning.

We believe that the hazards of smoking tobacco other than in the form of cigarettes are not, at this time, shown to be such as to require specific Federal labeling or advertising regulation, unless it be standby authority. The Surgeon General's Advisory Committee concluded only that the health hazard from cigarette smoking is of "sufficient importance" in this country to "warrant appropriate remedial action." (As to comparable death rates for other smokers, see p. 30 of the Committee's report.) This is not to say that other forms of smoking involve no health hazard. Two of the pending bills (H.R. 5973, H.R. 9512) would bring all smoking products under the Food, Drug, and Cosmetic Act. (They would include regulation of ingredients in addition to labeling.)

Secondly, we believe that regulation, whether voluntary or statutory, should extend both to labeling—i.e., any written, printed, or graphic matter upon or accompanying the consumer package and carton—and to advertising (other than labeling) in its various forms.

Thirdly, we believe that it is desirable to establish new specific statutory authority for regulation in this field. With respect to advertising, the FTC is exploring the scope of its existing authority in this field and will be testifying before this committee on this subject. With respect to labeling, we believe, for the reasons stated below, that legislation should be enacted to regulate the labeling of cigarettes, and that this should be done by way of appropriate amendments to the Federal Hazardous Substance Labeling Act.

The determination of the appropriate agencies to be charged with regulation in this field presents a difficult question. Without questioning the tentative conclusion of the Federal Trade Commission that the failure to include an appropriate health-risk warning, or the inclusion of certain claims, in cigarette labeling or advertising constitutes an unlawful trade practice under the Federal Trade Commission Act, it seems clear that the objective involved is the protection of the public health. If this objective and this special competence were to be alone determinative of the place where the regulatory authority to accomplish the objective should rest, it would seem to follow that the authoriy should be reposed in this Department. At the same time we are conscious of the fact that under the Wheeler-Lea amendment to the FTC Act the FTC has special enforcement responsibility, tools, and experience with respect to false or misleading advertisements of food, drugs, and cosmetics, though with respect to advertisements of prescription drugs important regulatory responsibility was cast upon up by the 1962 amendments to the Food, Drug, and Cosmetic Act. With respect to labeling regulations, however, there is no such parallel under the FTC Act. On the other hand, the type of regulatory approach, and the inspection, seizure, and

other enforcement provisions, of the Food, Drug, and Cosmetic Act and of the more recently enacted Federal Hazardous Substance Labeling Act, and the staff and experience built up in the administration of these acts, argue compellingly, in our view, for vesting responsibility for labeling regulation of cigarettes in this Department.

On balance, therefore, it seems to us that responsibility for labeling regulation of cigarettes should be vested in this Department, preferably by way of appropriate amendment of the Federal Hazardous Substances Labeling Act,[1] and that regulation of cigarette advertising, to the extent necessary, should be vested in the FTC (within the general framework of the Wheeler-Lea amendment) to be exercised, as suggested in H.R. 9655 and H.R. 9657, under standards established in cooperation with this Department. We intend to develop and, after coordination within the executive branch, submit a specific legislative proposal to carry out this approach. (While, in view of the evidence marshaled in the Advisory Committee's report, it could well be argued that cigarettes are "hazardous substances" as defined in the Federal Hazardous Substances Labeling Act, amendment of that act is desirable to avoid controversy on this point and to adapt the labeling requirements, etc., to the agreed objective.) Such legislation should not, we believe, spell out in the law specific kinds of ingredients that must be declared on the label, but should leave this matter to administrative regulation.

It should be emphasized in connection with the above-stated proposal that coordination between actual administration of the Food, Drug, and Cosmetic Act and that of the Wheeler-Lea amendment has been achieved without difficulty under a working agreement between the two agencies.

The considerations arguing for appropriate regulation in this field are, moreover, sufficiently compelling to make it likely that in the absence of Federal regulation the States or municipalities, or a number of them, would attempt to fill the void. With respect to advertising, such attempts would largely be abortive because of the territorial limits to State authority, the nature of some of the advertising media, and the exclusivity of Federal control over radio and television communication. But with respect to labels and "labeling" such efforts could be more effective, with results that, because of the diversity of regulation likely to occur, would tend to burden the industry far more severely than Federal regulation would be likely to do. In the case of a product, such as cigarettes, which is shipped by the manufacturer into every State by the millions of packages, uniformity of labeling requirements would seem to be of the essence.

B. Other regulations affecting tobacco products

H.R. 5973 and H.R. 9512 would deem a smoking product adulterated, and hence contraband, under the Food, Drug, and Cosmetic Act (sec. 651(1)), "if it bears or contains any poisonous or deleterious substance which may render it injurious to users under customary or usual conditions of use." In the light of the Advisory Committee's report on smoking and health, this provision might well completely outlaw at least cigarettes. This would be contrary to what, we understand, is intended or what, in the light of our experience with the 18th amendment, would be acceptable to the American people.

However, it does not necessarily follow that the manufacturer should be free to add to tobacco whatever ingredients he chooses, that there should be no regulation of pesticide residues in tobacco, or, for that matter, that ingredients naturally present and known to be toxic but not essential to the enjoyment of smoking, should not be required to be removed or filtered out to the extent that this may be reasonably feasible. It is interesting to note, in this connection, the following statement in the Advisory Committee's report (p. 62): "Additives have not been used in the manufacture of domestic British cigarettes since the Customs and Excise Act of 1952, clause 176, and probably longer, inasmuch as section 5 of the Tobacco Act of 1842 imposed a widespread prohibition on the use of additives in tobacco manufacture."

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[1] The two bills to amend the Food, Drug, and Cosmetic Act (H.R. 5973 and H.R. 9512) are not in suitable form even if it were determined to use that act, rather than the FHSL Act, as a vehicle for such legislation. The proposed sec. 652(1), which would deem a smoking product to be misbranded if its label (not its "labeling") were false or misleading in any particular, is the only provision of these bills that can be interpreted to call for cautionary labeling of such products (when construed with provisions already in the act, especially sec. 201(n), thus requiring us to fall back on interpretative regulations under sec. 701(a) of the act. The bills' purpose with respect to cautionary labeling would be more likely to be accomplished if these bills conferred clear statutory authority to establish requirements of cautionary labeling by substantive regulation.

In view of the need for further study and exploration of this matter, we have reached no conclusions as to the need for statutory authority to regulate the ingredients to be permitted in these products. We should be entitled, however, to ready access to the information available to manufacturers as to the ingredients added to or otherwise present in their products. This would both facilitate research in this field and consideration of the need for regulatory authority as to the quantity of various ingredients permitted in such products. At this time, therefore, we believe that legislation should be enacted to authorize us to require such information to be reported to us and give us access to the manufacturers' records for the purpose of verification of such reports. We intend to include specific provisions for that purpose in the overall regulatory legislative proposal we expect to develop.

D. Conclusion

In summary, then, we believe that programs of action in this field, as stated above in broad outline, are called for and that, in part, additional and specific legislative authority would be desirable. None of these above-mentioned bills are entirely suited, in their present form, to carry out the legislative aspects of the programs outlined above, though they will be helpful in the development of specific legislation to that end which we intend to submit.

We are advised by the Bureau of the Budget that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely,

ANTHONY J. CELEBREZZE,
Secretary.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., July 10, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your requests for the views of this Department concerning the following nine bills relating to cigarettes:

H.R. 3610, a bill to require disclosure of the effectiveness of filters on cigarettes distributed in commerce, and for other purposes;

H.R. 4168, a bill to provide that cigarettes sold in interstate commerce shall be packaged and marked so as to show the nicotine content and the tar content of the cigarettes in each package;

H.R. 7476, a bill to require that packages of cigarettes shipped in commerce bear a warning that they may be dangerous to health;

H.R. 9655, a bill to confer upon the Federal Trade Commission the power and duty to regulate the advertising and labeling of cigarettes;

H.R. 9693, a bill to provide that cigarettes sold in interstate and foreign commerce shall be packaged and marked so as to bear a warning that they may be dangerous to health and to show the nicotine and tar content of the cigarettes in each package;

H.R. 9808, a bill to authorize the Federal Trade Commission to require that cigarette packages and cigarette advertisements bear cautionary statements, and for other purposes;

H.R. 11671, a bill to regulate the labeling and advertising of cigarettes, and for other purposes;

H.R. 11714, a bill to amend the Federal Hazardous Substances Labeling Act to make that act applicable to cigarettes; and

H.R. 11919, a bill to regulate the labeling and advertising of cigarettes, and for other purposes.

While the specific provisions of these bills vary, their basic objective is the same—to protect the health of consumers and prospective consumers of cigarettes. Although the Department is in full sympathy with this objective, we question whether enactment of any of them would be appropriate or desirable at this time.

Early this year the Surgeon General's Advisory Committee issued its report on smoking and health. The Committee made a number of detailed findings with respect to the health hazards of cigarettes and concluded that "Cigarette smoking is a health hazard of sufficient importance in the United States to war-

rant appropriate remedial action." In the foreword to the Advisory Committee's report the Surgeon General pledged "that the Public Health Service will undertake a prompt and thorough review of the report to determine what action may be appropriate and necessary."

On February 25, 1964, the Surgeon General spoke of a "10-year plus" program he envisages: "We are aiming at a program of prevention—following the traditional and time-tested public health approach—a program aimed at preventing the habit before it is established. This means a program aimed at young people—teenagers and younger. This means a research program aimed at developing a safer cigarette and other safer forms of tobacco use." The Surgeon General also spoke of continuing research; cooperation with major voluntary health agencies and professional societies; conference plans of the Children's Bureau; a national clearinghouse on smoking and health for public education purposes; and regulatory programs of other Federal agencies.

On June 24, 1964, the Federal Trade Commission promulgated a rule to govern advertising and labeling of cigarettes. The labeling requirements of the rule are scheduled to take effect on January 1, 1965. The advertising requirements are to take effect on July 1, 1965, except as postponed, suspended, modified or abrogated upon application by an interested party and a showing of such change in circumstances as to justify change or delay. House joint resolutions have recently been introduced which if enacted would postpone the effective date of the rule.

On April 27, 1964, the cigarette companies announced the cigarette advertising code which prescribes standards in two areas—advertising which contains health representations, and advertising which has an appeal to young people.

The Surgeon General in his testimony before your committee on June 23 stated that the Department of Health, Education and Welfare intended to "develop, in cooperation with interested agencies, specific legislative proposals" relating to the advertising and labeling of cigarettes.

All of the above indicate a general awareness of the relationship between smoking and health and a recognition of the need to develop answers to the problem. Under the circumstances the Department recommends against enactment of any of these nine bills at this time.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of our report from the standpoint of the administration's program.

Sincerely,

ROBERT E. GILES.

FEDERAL TRADE COMMISSION,
Washington, D.C., June 22, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of February 22, 1963, requesting comments by the Federal Trade Commission on H.R. 3610, 88th Congress, 1st session, a bill to require disclosure of the effectiveness of filters on cigarettes distributed in commerce, and for other purposes.

The bill provides that "the manufacture for distribution in commerce of any cigarettes which are misbranded shall be an unfair method of competition." It then provides that cigarettes shall be considered misbranded unless each package or container bears a label, prepared in compliance with regulations prescribed by the Federal Trade Commission, which specifies (1) the nicotine and tar content of the mainstream smoke per cigarette; and (2) the degree to which the nicotine and tar content of the smoke of each cigarette has been reduced by any filter device attached to, or incorporated in, the cigarette. The bill defines "mainstream smoke per cigarette" as meaning the smoke that enters the smoker's mouth while smoking a cigarette under standard smoking conditions.

It is also provided that sections 4, 5, 6, 8, 9, and 10 of the Federal Trade Commission Act are to apply to any proceeding for enforcement of the proposed legislation and with the same effect as any proceeding for the enforcement of section 5 of the Federal Trade Commission Act. The bill finally provides that the willful removal, alteration, or rendering illegible of any label which it prescribes prior to the time that the cigarettes are purchased shall be a criminal offense.

The Commission, in September 1955, adopted "Cigarette Advertising Guides," which were for the use of its staff in the evaluation of cigarette advertising. Among its provisions was that no representation, claim, illustration, or combination thereof should be made or used which directly or indirectly—

"* * * Represents that any brand of cigarette or the smoke therefrom is low in nicotine or tars, or contains less nicotine, tars, acids, resins, or other substances, by virtue of its ingredients, method of manufacture, length, added filter, or for any other reason or without any assigned reason, than any other brand or brands of cigarettes when it has not been established by competent scientific proof applicable at the time of dissemination that the claim is true, and if true, that such difference or differences are significant."

The subject bill is closely related to the study now being made under the direction of the Public Health Service of the Department of Health, Education, and Welfare as to any possible relationship between cigarette smoking and health. We are informed that a report will be issued approximately April 1, 1964. The Commission wishes to defer any recommendation on H.R. 3610 until it has had an opportunity to thoroughly consider and fully appraise the findings resulting from this study.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on April 12, 1963, and on June 19, 1964, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the administration's program.

JOSEPH W. SHEA, *Secretary.*

FEDERAL TRADE COMMISSION,
Washington, D.C., June 22, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of March 4, 1963, requesting comments by the Federal Trade Commission on H.R. 4168, 88th Congress, 1st Session, a bill "To provide that cigarettes sold in interstate commerce shall be packaged and marked so as to show the nicotine content and the tar content of the cigarettes in each package."

The bill provides that cigarettes are misbranded "unless they are in a package or other container on which is clearly indicated, . . . the nicotine content and the tar content of the total number of cigarettes" therein.

The bill further provides for enforcement by the Federal Trade Commission "as though applicable terms and provisions" of the Federal Trade Commission Act were incorporated into and made a part of the subject bill.

The Commisison would be authorized thereby to "cause inspections, analyses, tests, and examinations of any cigarettes which it has reason to believe fall within the prohibitions" of the bill and to cooperate with Government agencies, departments, and politicial subdivisions on matters related to the purposes of the bill.

In September 1955, the Commission adopted "Cigarette Advertising Guides," which were for the use of its staff in the evaluation of cigarette advertising. Among its provisions was that no representation, claim, illustration, or combination thereof should be made or used which directly or indirectly—

"* * * Represents that any brand of cigarette or the smoke therefrom is low in nicotine or tars, or contains less nicotine, tars, acids, resins, or other substances, by virtue of its ingredients, method of manufacture, length, added filter, or for any other reason or without any assigned reason, than any other brand or brands of cigarettes when it has not been established by competent scientific proof applicable at the time of dissemination that the claim is true, and if true, that such difference or differences are significant."

The subject bill is closely related to the study now being made under the direction of the Public Health Service of the Department of Health, Education, and Welfare as to any possible relationship between cigarette smoking and health. We are informed that a report will be issued approximately April 1, 1964. The Commission wishes to defer any recommendation on H.R. 4168 until it has had an opportunity to thoroughly consider and fully appraise the findings resulting from this study.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

N. B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on April 12, 1963, and on June 19, 1964, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the administration's program.

JOSEPH W. SHEA, *Secretary.*

FEDERAL TRADE COMMISSION,
Washington, D.C., June 22, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request of July 16, 1963, for the views of the Commission on H.R. 7476, 88th Congress, 1st Session, a bill "To require that packages of cigarettes shipped in commerce bear a warning that they may be dangerous to health."

The bill provides that it shall constitute a criminal offense for a manufacturer of cigarettes to introduce or deliver for introduction into "commerce" any cigarettes, unless each individual package, in which the cigarettes are usually sold to the ultimate consumer, has on it "Warning—Contents May Be Dangerous To Health."

The bill also makes it illegal to alter, mutilate, destroy, obliterate, or remove any of the printed matter required by the act.

Commerce is defined as meaning "commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States, and any place outside thereof, and * * * within the District of Columbia or any possession of the United States."

The subject bill is closely related to the study now being made under the direction of the Public Health Service of the Department of Health, Education, and Welfare as to any possible relationship between cigarette smoking and health. We are informed that a report will be forthcoming on or about April 1, 1964. The Commission wishes to defer any recommendation as to H.R. 7476 until we have an opportunity to thoroughly consider this report and fully apprise ourselves of the findings contained therein.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on August 6, 1963, and on June 19, 1964, the Bureau of the Budget advised that there is no objection to the submission of this report from the standpoint of the administration's program.

JOSEPH W. SHEA, *Secretary.*

FEDERAL TRADE COMMISSION,
Washington D.C., June 22, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your requests for comments on H.R. 9655, 88th Congress, 2d session, a bill to confer upon the Federal Trade Commission the power and duty to regulate the advertising and labeling of cigarettes; H.R. 9693, 88th Congress, 2d session, a bill to provide that cigarettes sold in interstate and foreign commerce shall be packaged and marked so as to bear a warning that they may be dangerous to health and to show the nicotine and tar content of the cigarettes in each package; and H.R. 9808, 88th Congress, 2d session, a bill to authorize the Federal Trade Commission to require that cigarette packages and cigarette advertisements bear cautionary statements, and for other purposes.

The Commission is strongly in favor of any necessary or desirable legislation to protect the health and safety of the consuming public and prevent deceptive or unfair advertising and labeling of consumer products. However, the Commission does not believe that it would be appropriate for it to comment at this time upon the specific provisions of the subject bills. The Commission is currently in the midst of a comprehensive rulemaking proceeding designed to determine whether, and what, remedial action on the part of the Commission in the field of cigarette advertising and public health is warranted. After this proceed-

ing is completed, the Commission will be in a far better position to evaluate specific remedial proposals such as those made in the subject bills, for example, that all cigarette packages carry a warning and that the labels on such packages be required to disclose the quantity of certain ingredients in the tobacco smoke. Since these matters are currently under intensive study by the Commission, the Commission believes that it should reserve judgment and does not wish to comment on the provisions of the subject bills at this time.

By direction of the Commission.

PAUL RAND DIXON, *Chairman.*

N.B.—Pursuant to regulations, this report was submitted to the Bureau of the Budget on April 13, 1964, and on June 19, 1964, the Bureau of the Budget advised that there is no objection from the standpoint of the administration's program to the submission of this report.

JOSEPH W. SHEA, *Secretary.*

The CHAIRMAN. The purpose of these hearings will be, if we can reach that point, to determine the extent of authority under existing law to deal with the various aspects of this general field, and to determine whether any action of the Congress is warranted in the interest of public health. In other words, we want to find out under our responsibility whether or not legislative action is necessary, and if so, what kind.

We are honored this morning to have a number of our colleagues interested in this subject. We are particularly honored to have with us the distinguished Senator from Oregon, the Honorable Maurine B. Neuberger. Senator, we welcome you to this committee.

STATEMENT OF HON. MAURINE B. NEUBERGER, A U.S. SENATOR FROM THE STATE OF OREGON

Senator NEUBERGER. Thank you.

The CHAIRMAN. We know of your interest in this subject and the tremendous work that you have given in the field over the last several years. We shall be glad to have your comments.

Senator NEUBERGER. Thank you, Mr. Chairman. I am pleased to be here and to have this distinguished committee considering this important subject which you have so ably outlined. It would probably be more logical to have the Surgeon General of the United States, Dr. Terry, appear before me, since it is the report of his advisory committee that has further stimulated and authorized some of our discussions. But as many of you gentlemen know, the exegencies of committee meetings call us and I have one I should be attending on the Senate side very soon.

So I appreciate going first. One of the things we all have is a great deal of national pride. I have pride in the history of my country, its progressiveness in public education, and in establishing the world's greatest democracy. But my pride begins to be shaken when I find other nations taking a lead in protecting the health of their peoples, and especially in this area.

We have dragged behind some of the other countries of the world; namely, the Scandinavian countries, Italy, Britain, and the Soviet Union. I think the chairman has just stated well the economic approach to this. When I visited the people in England, Sir Robert Platt especially, who have taken the lead in this, I said "We have one problem which you do not have. We grow tobacco. It is a great source of revenue both for the people it employs and the taxes it brings

in." We know that this does affect our thinking in this area. But being also concerned with the health of our people, we have to realize the millions of dollars that are lost when people are unable to continue in employment and are hospitalized because of the crippling and eventually probably fatal lung cancer or the other crippling diseases, emphysema and the cardiovascular diseases.

What we have to do is to weigh human life and well-being and its economic value versus that of a single industry. As the Senate sponsor of the Cigarette Advertising and Labeling Act and the Cigarette Health Hazard Act, S. 2429 and S. 2430, I am naturally interested in seeing that the companion House bills to supplement the powers of the Federal Trade Commission and the Department of Health, Education, and Welfare be given full and favorable hearings.

But there is a paramount issue. What these agencies need most from Congress now is not supplemental authority but vigorous support for the politically hazardous road upon which conscience and their duty have led them. Both the Federal Trade Commission and the Public Health Service have now responded vigorously to the report of the Surgeon General's Committee on Smoking. The FTC, as the committee is aware, has issued proposed trade regulation rules governing both advertising and labeling of cigarettes under its substantive rulemaking authority. Extensive hearings on these rules have not been completed and await only the final judgment of the Commissioners. On its part, the Public Health Service has developed a massive program of research and education.

Congress, either directly or by implication, should do nothing which would obstruct or impede the implementation of these agency programs. I am certain that you will agree with me that it would be ironic if the just and proper concern of your committee were to be misinterpreted by the public or by the FTC or the Public Health Service as an effort to do so.

Mr. Chairman, you have recently raised the issue of preemption—that is, whether the public interest requires the Federal action in this area should be of such a nature as to cover the entire field to the exclusion of action taken or contemplated on the State and local levels.

I am aware that the cigarette industry fears a multiplicity of conflicting State and local laws regulating the sale of advertising of cigarettes in the absence of comprehensive Federal regulation. I recall that Dr. James, the health commissioner for the city of New York, in testifying before the FTC on the Commission's proposed cigarette advertising rules promised that, if the FTC failed to enact its proposed rules, the city of New York would surely move to enact such regulation for itself.

The FTC proposals strike at the heart of the public issues raised by cigarette advertising practices. If the rules are issued substantially as proposed, I have no doubt that the steam will be dissipated from all local attempts to add what may be onerous conditions to the sale of cigarettes, although such questions as the utilization of unattended vending machines and the restriction upon the sale of cigarettes to minors remain most appropriate for local determination.

There has arisen speculation during the past few days that the Department of Health, Education, and Welfare, to be represented later this morning by Surgeon General Terry, has now determined that

HEW should be given authority to regulate cigarette package labeling.

If this is true, Mr. Chairman, it represents an ironic twist of fate. On January 28, 1963, I wrote to Commissioner Larrick, of the Department's Food and Drug Administration, suggesting that the Federal Hazardous Substances Labeling Act of 1960—which defines "hazardous substance" as "any substance * * * which has the capacity to produce * * * illness to man through * * * inhalation"—clearly encompasses the cigarette.

With no attempt to explain why this definition does not fit, Commissioner Larrick disagreed. Now, the Department of Health, Education, and Welfare wants to regulate labels—but it says it needs new legislation. One wonders just how serious the Department's urge to regulate really is.

The regulation of cigarette advertising is now a marketing problem, not a public health problem. The Federal Trade Commission, in proposing its rules on cigarette advertising, did not invade the domain of the Public Health Service. It was responding to the definitive report of the Surgeon General's Committee on Smoking and Health.

No one has questioned the authority of the Federal Trade Commission to regulate the unfair and deceptive advertising of cigarettes. Even the tobacco industry does not dispute this authority although industry spokesmen have questioned the rulemaking capacity of the Commission to accomplish this regulation.

The information printed on a cigarette package is designed to inform the public, as is advertising copy carried on the communication media. I fail to see why, at this late date, HEW now feels its jurisdictional toes have been trodden upon. In any event, it would be tragic if regulations so significant to the health of Americans should fall victim to a petty jurisdictional dispute.

It is also reported that the Public Health Service feels that the cigarette industry should be given an opportunity to reform its own advertising.

The industry, in adopting its code of cigarette advertising practices, has demonstrated the limits of its capacity for self-regulation. In so doing it has shown that it is able to eliminate certain gross practices, particularly relating to overappeals to children, but the industry code ignores the crucial requirement of an affirmative warning in all cigarette advertising. I think we can be satisfied that this requirement will not come by way of voluntary action.

Mr. Chairman, vested interests have always feared the regulatory agencies. There has been, and will continue to be, a constant battle to maintain this fourth branch of government free from manipulation. Those who are interested in the welfare of the consumer have had to maintain a constant guard to see that good and honest men are placed on the commissions and kept there and that their regulatory functions are not abused or disturbed by interference from without.

Two weeks ago, in New York, Surgeon General Luther Terry told a conference of smoking and youth that—

> if this generation of children and youth takes up smoking, as they assuredly will unless they are convinced otherwise, millions of them in later years will suffer needless illness and disability, and will die before their time. Major TV network cigarette advertising expenditures have jumped from $21.8 million in the first quarter of 1963 to $26.4 million in the first quarter of this year.

I emphasize that is just major TV networks advertising. It does not include magazines and other promotions. No one who has viewed the phenomenon of cigarette advertising practices objectively believes that we will be able to convince our children that cigarette smoking is a truly significant hazard to their health so long as cigarette advertisements are free of warning.

The proposed FTC rules will require such warning. It would be tragic indeed, Mr. Chairman, if these rules were to fall victim to the tobacco lobby. For then the Government, as it has too often in the past 15 years, would have failed to meet its duty to protect public health.

In addition to the millions of dollars affected by the industry there are millions of children now living and adults now living who will die before their time because of the relationship between smoking and disease. This morning's New York Times carries important material on the subject and I might say it has pleased me to see how the communications media has been interested in the problem. The New York Times editorial concludes with an interesting paragraph:

> The Federal Government, as we have often observed, has the main responsibility to inform the public about the dangers in smoking.

And I like its concluding sentence especially, because of the cooperation it suggests:

> The Federal Trade Commission should soon bring out its own code for cigarette advertising, and the administration should follow with other measures to alert the public to the risk involved.

Another section of the New York Times carries an article referring to the meeting of the American Medical Association in San Francisco where different States represented in the AMA house of delegates have offered resolutions urging that their parent organization strengthen and clarify its stand on the hazards of smoking, particularly cigarette smoking. Mr. Chairman, I am delighted to come to you and tell you of some of the hopes and fears I have for this important subject of smoking and disease.

Thank you.

The CHAIRMAN. Senator, thank you very much for your presentation here this morning, and for your advice and counsel to the committee. I am sure there are questions that arise in the minds of certain members, but we recognize, of course, that you do have an important committee meeting in the Senate and therefore we will not detain you, because undoubtedly these questions will be taken up with other witnesses that come along.

Senator NEUBERGER. Thank you.

The CHAIRMAN. We do want to thank you for your taking the time to come here and be with us for these hearings this morning.

Mr. Kornegay, it looks like you have something to say. I know you talked to me about it.

STATEMENT OF HON. HORACE R. KORNEGAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. KORNEGAY. Yes, indeed, Mr. Chairman. I do not want to take up the time before the witnesses come on. But I do have a statement to make to the Committee.

The CHAIRMAN. That is a tobacco plant in front of you, I assume.

Mr. KORNEGAY. Mr. Chairman, that is a tobacco plant, the defendant at this trial. I thought it had a right to be confronted by its accusers, so I brought it along this morning.

The CHAIRMAN. You may proceed, if you desire.

Mr. KORNEGAY. This tobacco plant, Mr. Chairman, and the millions of Americans whose livelihood depends either in total or in part on this plant and its products stand in serious jeopardy today. It has been indicated on the basis of insufficient evidence. It has been tried without the right of a proper defense. It has been found guilty by its own accusers. Today we sit here listening to a number of proposed penalties which could condemn this tobacco plant—and all those who earn their keep in total or in part from it—to difficult times at best, and at worst poverty.

Yes, the health factor is tremendously important. The health of our people of course is of primary importance, Mr. Chairman. But the basis for the accusation of this tobacco plant is the inconclusive report on smoking and health. I say this with all due respect to the Surgeon General of the United States and the members of the Advisory Committee which worked long and hard on this report. But there is a definite need for more research.

The House Committee on Agriculture has approved a bill calling for a crash program of research into all aspects of tobacco to find what, if any, health hazards there are in tobacco and the means of eliminating them. This bill is now pending before the House Rules Committee. The Surgeon General, in testimony before the House Agricultural Subcommittee on Tobacco, said that more research is needed in tobacco. Still on the basis of the report on smoking and health to the Surgeon General this tobacco plant and the agri-business complex that has grown from it is in serious jeopardy.

The report itself had been available to the public for only a week when the Federal Trade Commission called for hearings on a plan to brand every package of cigarettes with a warning that smoking is dangerous to health.

Today this committee has before it almost a dozen bills designed to brand every package of cigarettes with a skull and crossbones or some equally forbidding warning.

Yes, the health of our people is of the utmost importance. But, I maintain, to brand every package of cigarettes is utterly absurd on the basis of the information published thus far. To be sure many people who smoked have died of cancer. Some who did not smoke also have died of cancer.

For Congress to require a warning to be placed on every cigarette package is just about as farfetched as putting a warning on every car that comes out of Detroit simply because thousands die in automobile accidents every year.

Now do not misunderstand me. I would not be here defending this little plant today if I thought it had had a fair trial. But it has not.

Let the Federal Government sponsor a crash program of research into health hazards of tobacco and let private organizations do so with private and/or public moneys. If they find conclusive proof of health hazards in this tobacco plant or in any of the products it produces and if they cannot find means of eliminating them, then I certainly would not oppose proper branding.

But to lynch this tobacco plant and endanger the livelihood of those who depend upon it on the basis of the smoking and health report is not justice. More than 70 million Americans smoke, Mr. Chairman, and they are not going to stop smoking, and this certainly should be evident from the tobacco product sales since the release of the smoking and health report earlier this year.

The health factor, as I have emphasized, is of prime importance to all of us. However, there is another side, and either directly or indirectly it touches every citizen in the United States. That is the economic side which the chairman referred to in his opening statement here today.

There are today millions of plants like this one before me grown in fields in 21 States. Hundreds of thousands of farm families will earn a major portion, if not all, of their income for the year from growing tobacco. There are today some 96,000 workers in some 550 plants in 30 States engaged in the manufacture of tobacco products. There are today over 1½ million businesses in every State in this country which are earning some portion of their income from the sale of tobacco products.

Federal, State, and local governments are today collecting a sizable amount of tax from the sale of tobacco products. Taxes from tobacco products brought in about $3.3 billion in 1963. And today this plant is working for the United States of America around the world. Over 500 million pounds of American tobacco was sold in free markets around the world last year. The United States is the largest exporter of cigarettes, shipping over 23 billion in 1963.

This tobacco plant is important in every State in this country. It deserves a fair trial. For this tobacco plant, for the millions who earn all or a part of their livelihood from its products and for the millions who derive enjoyment and psychological satisfaction from it, I hope this committee will not condemn it before it receives a fair trial.

I say let us give it a fair trial. Let a crash program of research be conducted and let definite results be pinpointed. Let this be done before this Congress considers branding all tobacco products and thereby condemns thousands of our people to the poverty which they and our Federal Government are trying to avoid.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Are there any other members of the committee who have any comments at this point?

Mr. CUNNINGHAM. Mr. Chairman, could I ask the gentleman a question?

The CHAIRMAN. Briefly.

Mr. CUNNINGHAM. There has been the report of the Surgeon General and there has been a lot of publicity about this matter. Do you not agree that all of this publicity would cause people to be informed and if they felt or were convinced that smoking was a contributor to respiratory illness and cancer that that in itself will be enough for them to make their own decision?

Mr. KORNEGAY. I think the gentleman has hit a very valid point and one which I intended to bring out during the course of the hearings. You could not give any situation any more publicity than this report on smoking and health has received. To think that merely branding or putting a warning on the tobacco package would bring it closer to the attention of the public is incomprehensible to me. I

think the great national debate and the tremendous amount of publicity that has come about as a result of the Report of the Surgeon General on Smoking and Health certainly has put this subject before the public and I am sure on the minds of everyone who indulges in smoking.

Mr. CUNNINGHAM. They can make their own decision.

Mr. KORNEGAY. Absolutely. The report is available to them. It has been printed, talked about on radio and television. To come along now and say that we ought to stamp some sort of warning on a package of cigarettes to me would be completely incidental and would have little or no effect as compared to what has gone on before.

Mr. CUNNINGHAM. I thank the gentleman.

Mr. KORNEGAY. I thank the gentleman for raising that very valuable point.

(The statement referred to follows:)

A STATEMENT OF CONGRESSMAN HORACE R. KORNEGAY, REPRESENTATIVE OF THE SIXTH DISTRICT, NORTH CAROLINA, BEFORE THE HOUSE COMMERCE COMMITTEE, JUNE 23, 1964

Mr. Chairman, this tobacco plant—and the millions of Americans whose livelihood depends either in total or in part upon it and its products—stands today in serious jeopardy.

It has been indicated on the basis of insufficient evidence, tried without the right of having a proper defense, and has been found guilty by its own accusers.

Today we sit here listening to a number of proposed penalties which could condemn this tobacco plant, and all those who earn their keep in total or in part from it, to difficult times at best, and at the worst poverty.

Yes, the health factor is important. The health of our people is of primary importance. But the basis for the accusations of this tobacco plant is a delusive and inconclusive report on smoking and health.

I say this with all due respect to the Surgeon General of the United States and the members of the Advisory Committee that worked long and hard on the report.

The report, as a whole is a very comprehensive summary of the past research on smoking and health.

However, the implications of the report are vastly more far-reaching than its conclusions. These are the implications that have brought forth these "branding" bills.

For instance, the implication of the report to the public is that smoking is detrimental to health, that it causes cancer and/or other diseases.

The conclusion that I gathered from reading the report and listening to its discussion by the experts is that smoking, like many other things, may or may not be a contributing factor to cancer in some individuals.

In fact, the smoking and health report states that "medical perspective requires recognition of significant beneficial effects of smoking primarily in the area of mental health.

"These benefits originate in a psychogenic search for contentment and are measurable only in terms of individual behavior.

"Since no means of quantitating these benefits is apparent, the advisory committee finds no basis for a judgment which would weigh benefits versus hazards of smoking as it may apply to the general population."

There is a definite need for more research. The House Agriculture Committee has approved a bill calling for a crash program of research into all aspects of tobacco to find what, if any, health hazards there are in tobacco, and the means of eliminating them.

This bill is now before the House Rules Committee.

The Surgeon General, in testimony before the House Agriculture Subcommittee on Tobacco, said that more research is needed in tobacco.

Still, on the basis of the report on smoking and health to the Surgeon General, this tobacco plant and the agri-business complex that has grown from it is in serious jeopardy.

The report itself had been available to the public for only a week when the Federal Trade Commission called for hearings on a plan to "brand" every package of cigarettes with a warning that smoking is dangerous to health.

And, today, this committee has before it almost a dozen bills designed to brand every package of cigarettes with a skull and crossbones or some equally forbidding warning.

Yes, the health of our people is of the utmost importance. But, I maintain, to brand every package of cigarettes is utterly absurd on the basis of information published thus far.

To be sure, many people who smoked have died of cancer. Some who did not smoke also have died of cancer.

For Congress to require a warning to be placed on every cigarette package is just as farfetched as putting a warning on every car that comes out of Detroit simply because thousands die in automobile accidents each year.

Don't misunderstand me, I would not be here defending this little plant today if I thought it had had a fair trial. But it has not.

Let the Federal Government sponsor a crash program of research into the health hazards of tobacco, and let private organizations do so with private and/or public moneys.

If they find conclusive proof of health hazards in this tobacco plant or in any of the products it produces and if they cannot find means of eliminating them, then I certainly would not oppose proper branding.

But, to lynch this tobacco plant—and endanger the livelihood of those who depend upon it—on the basis of the smoking and health report is not justice.

More than 70 million Americans smoke. They are not going to stop, and this certainly should be evident from the tobacco products sales since the release of the smoking and health report early this year.

The health factor, as I have emphasized, is of primary importance to all of us.

However, there is another side and either directly or indirectly it touches practically every citizen in these United States.

This is the economic side.

There are today millions of plants like this one growing in fields in 21 States.

Hundreds of thousands of farm families will earn a major portion, if not all, of their income for the year from growing tobacco.

There are today some 96,000 workers in some 550 plants in 30 States engaged in the manufacture of tobacco products.

There are today over 1½ million businesses in every State in this country which are earning some portion of their income from the sale of tobacco products.

Federal, State, and local governments are today collecting a sizable amount of tax from the sales of tobacco products. Taxes from tobacco products brought over $3.3 billion in 1963.

Today this plant is working for the United States around the world. Over 500 million pounds of U.S. tobacco was sold in free markets around the world last year; and the United States was the largest exporter of cigarettes—23.2 billion in 1963.

This tobacco plant is important in every State in the country.

It deserves a fair trial.

For this tobacco plant, for the millions who earn all or part of their livelihood from its products, and for the millions who derive enjoyment and psychological satisfaction from them, I hope this committee will not condemn it before it receives a fair trial.

Give it a fair trial. Let a crash program of research be conducted and let definite results be pinpointed. Let this be done before this Congress considers branding all tobacco products, and thereby condemn thousands of our people to the poverty which they and our Federal Government are trying to avoid.

The CHAIRMAN. The next witness is our colleague on the committee from Michigan, the Honorable John D. Dingell. Mr. Dingell, we will be glad to hear you at this time.

STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. Chairman and members of the committee, for the record my name is John D. Dingell. I am a Member of Congress from the 15th District of Michigan. I very much appreciate the courtesy of the committee in permitting me to appear in support of my bill, H.R. 9657, and other similar bills to confer upon the Federal

Trade Commission the power and duty to regulate advertising and labeling of cigarettes.

All of us are aware of the results of the study completed by the special panel, gathered together by the Surgeon General, to inquire into the hazards of cigarette smoking.

In 1962, over 500,000 people died of arteriosclerotic heart disease. Studies have shown that one of the major causes of this, and other types of heart disease, is smoking. In 1962, 15,000 people died of bronchitis and emphysema, and 41,000 of lung cancer. It is estimated that 49,000 people will die of lung cancer this year.

The study of the Surgeon General indicated that heavy smokers have 30 times the death rate of nonsmokers. More than one-third of America's 35-year-old men will not live to be 65 if they smoke more than a pack of cigarettes a day. Four-fifths of lung cancer victims are smokers. Light smokers run a tenfold risk of contracting cancer as opposed to those who do not, and heavy smokers face a twentyfold risk. Among the evil effects of smoking are heart diseases, circulatory diseases, emphysema, cancer of the lung, lip, mouth, throat, and bronchus, and a number of other serious illnesses.

The American Cancer Society and all of the major voluntary health organizations have warned against the hazards of smoking. The Royal College of Surgeons in England did likewise.

It seems very clear to me that the wisest thing this Congress could do would be to enact legislation similar to H.R. 9657, to confer upon the Federal Trade Commission the power and duty to regulate advertising and labeling of cigarettes and to protect our people by having packages of them bear clear warning of health risks from incriminating or dangerous agencies present in the cigarettes and their smoke.

The last purpose of this bill is to prevent advertising directed at young people in this country, a hazard to the future of America, which I think is particularly bad. The Federal Trade Commission is a most responsible agency and would carry out the functions and purposes of this bill fairly, impartially, and well. I urge the committee to give favorable consideration to H.R. 9657.

The CHAIRMAN. Are there any questions? If not, we thank you, Mr Dingell.

Mr. DINGELL. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is our colleague from New York, the Honorable R. Walter Riehlman.

Mr. Rielhman, we are glad to have you.

STATEMENT OF HON. R. WALTER RIEHLMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RIEHLMAN. I am pleased to have the opportunity to make a statement regarding my bill, H.R. 9809.

My bill differs in some degree from the other nine introduced on the same subject. Therefore, I would like to discuss the contents of mine.

H.R. 9809 would authorize the Federal Trade Commission to take the following actions:

1. Prescribe a precautionary statement for mandatory use on cigarette packages and in all types of advertising in all media.

2. Prescribe the printing on cigarette packages of each component in the product which the Surgeon General determines is, or is likely to be, a cancer-causing agent.

Section 2 of the bill provides that the Surgeon General continuously publish a list of all Government documents relating to the effect of cigarette smoking on public health and distribute this list to educational institutions.

Those institutions could then request five copies of each publication for use by teachers and students.

These free publications would be available to all schools, public and private, elementary and secondary, and all institutions of higher learning.

It may be that five copies of each publication would not be sufficient for most schools. However, that is an arbitrary figure and certainly can be easily changed if it is shown that more are needed.

Although I do not smoke, my bill was not introduced as an anti-tobacco measure. I am only concerned that youngsters realize the possible dangers before they adopt a habit which may be lifelong.

As the committee is aware, the Surgeon General's report stated that youngsters who begin smoking before the age of 20 have substantially higher death rates than those who begin after 25.

I do not know what form a precautionary statement should be that would appear on cigarette packages. Certainly no one could quarrel with this much of a statement: "May be habit forming."

However, I would like to see something like the following, which, I am sure, will generate controversy despite overwhelming support by scientific opinion: "* * * continued use of this product may be harmful to health."

The listing of cancer-causing agents, suspected and proven, on packages may now be listed without additional authority, the Federal Trade Commission believes. However, any action it takes will be promptly challenged in court.

It seems to me that we ought to settle the matter here in Congress with finality.

I would like to say that this matter of labeling bears some similarity to the actions Congress has taken with respect to drugs and medicines.

Congress has been most concerned that effects of products on human beings be fully explained on containers and enclosed literature. We should be no less diligent with cigarettes whether they be used as stimulants or as tranquilizers.

I suppose the question will naturally be raised that this would discriminate against tobacco while alcoholic products escape labeling and may be just as dangerous or more so.

The basic difference, I feel, is that there are more stringent restrictions on the sale of alcoholic beverages.

There are practically none on cigarettes when one considers their easy availability in vending machines—machines that are in gas stations, public buildings, drive-ins, and, in fact, in nearly every unoccupied niche wherever one goes. Supervision over the purchaser is practically nil.

In conclusion, I want to say that I hope the committee will favorably consider my bill or any part of it that will constructively help the young people of our country to make a thoughtful decision on the use of tobacco.

The CHAIRMAN. Thank you for your appearance and testimony, Mr. Riehlman.

Mr. RIEHLMAN. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is our colleague from Florida, the Honorable Don Fuqua.

Mr. Fuqua, welcome to the committee.

STATEMENT OF HON. DON FUQUA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FUQUA. I would first of all like to express my appreciation to the members of the Interstate and Foreign Commerce Committee of the House of Representatives for this opportunity to appear and to express my views on this matter, which is of so much importance to my district.

Let me say that I am opposed to the regulation of the Federal Trade Commission in ruling that all cigarette packages must be labeled with an inscription that they may be dangerous and cause certain diseases.

I consider that this is a discriminatory action against the tobacco industry. Cars are responsible for thousands of deaths annually, but they are not required to carry signs that driving them at excessive speeds might result in death or injury.

I am for the protection of the American people and their health.

It is commendable that the Federal Trade Commission seeks to protect the American people, and it is my opinion that they are doing, and have done, a fine job. I simply disagree with this one action without casting aspersions upon their fine work or their motives.

But, I would point out that the Surgeon General's report still leaves a considerable doubt. We simply don't know. Cigarettes can be assessed with the blame, and we go heedlessly along ignoring the pollution of the air and other factors which it is theorized might be the cause of the rising incidence of lung cancer.

It is easy to say that cigarettes are the villain and let it go at that. I believe that in the future we may well find this is not the whole picture and possibly not the picture at all.

In fairness, let me say, I am for the release and the public dissimination of all the information and data of the Surgeon General in this field. I think a most worthwhile service was provided in releasing this report. We seek not to "hush it up," and millions are heeding the advice that smoking be discontinued. Those who continue to smoke know of the report and of the possible consequences.

The tobacco industry itself is investing millions of dollars in research to determine the consequences of smoking, and I think it is to be commended for the attitude of policing itself, and the limitations it has placed upon its advertising.

The tobacco industry pours millions upon millions of dollars into our economy in taxes. It has been one of the prime industries in the growth and development of the United States. In a number of the counties I have the honor to represent tobacco forms the backbone of the agricultural economy.

These facts should not be treated lightly. I think that this particular action in calling for the labeling of cigarette packages is discriminatory in that there are numerous things that we do that could be injurious,

but they are not required to be so labeled. Let us urge that full and complete disclosures be made of all new information gleaned from research, relative to smoking, both from our Government scientists and the research laboratories of the tobacco companies themselves. Let the people know, and then let them decide for themselves.

I personally feel that, in fairness, the ruling of the Federal Trade Commission in this instance should not be allowed to stand.

The CHAIRMAN. We appreciate your testimony, Mr. Fuqua.

Mr. FUQUA. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. Our next witness is the gentleman from Connecticut, the Honorable Bernard F. Grabowski. Mr. Grabowski, we are glad to have you before the committee.

STATEMENT OF HON. BERNARD F. GRABOWSKI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Mr. GRABOWSKI. Mr. Chairman, nearly a year ago I introduced a bill, H.R. 7476, which would provide that all cigarettes sold in interstate commerce be labeled with the warning that smoking may be dangerous to health. Since that time, of course, the Surgeon General's Advisory Committee on Smoking and Health has issued its comprehensive report on the relationship between cigarette smoking and specific diseases which include lung cancer, cancer of the larynx; respiratory diseases such as chronic bronchitis and emphysema; and the variout cardiovascular diseases. If there was any doubt as to the serious health hazard inherent in cigarette smoking prior to the release of that report, there should be none now; and if there was formerly any doubt as to the desirability—in fact, the necessity—of positive action to counteract this threat, there should be none now.

Despite the straightforward language of the Advisory Committee's report and the ominous statistics which reveal that cigarette smoking is associated with a 70-percent increase in the age-specific death rates of males as well as a somewhat lower increased death rate for females, there has been no really substantial change in the pattern of U.S. cigarette consumption in recent months. While it is true that there has been a slight decline in cigarette sales in some States, other States have actually reported increases in revenue from cigarette taxes. Moreover, judging from previous experience both in this country and in Great Britain, we can expect cigarette sales to begin climbing once again after a short interval. At least that is what we can expect unless we take firm and positive action to insure that the public will be kept constantly aware of the health dangers inherent in cigarette smoking.

Today nearly 70 million people in the United States are regular smokers, and some 4,500 boys and girls between the ages of 12 and 17 take up the habit each day of the year. Figures for 1962 reveal that these smokers consumed an average of one pack of cigarettes a day. Now according to the Surgeon General's Advisory Committee's findings, the average or moderate smokers who use a pack of cigarettes a day are 9 or 10 times more likely to develop lung cancer than their nonsmoking contemporaries. The heavy smokers who consume two or more packs of cigarettes a day have at least a twentyfold risk. Smokers have consistently higher death rates from all causes than do nonsmokers, but the high likelihood of early death from heart disease and cancer is especially alarming.

Thirty years ago the number of lung cancer deaths in this country totaled less than 3,000 per year; today the total is approximately 41,000 annually. The death toll from cardiovascular diseases has also risen sharply, more than doubling in the last 20 years. Reported deaths from chronic bronchitis and emphysema have also spiraled from 2,300 in 1945 to 15,000 in 1962. At the same time that these death rates have been climbing so steeply there has been a tremendous increase in the per capita consumption of cigarettes with today's rate more than twice that of 1940. Furthermore, we know now that this is not just a peculiar coincidence but that there is a direct causal relationship between cigarette smoking and lung cancer, cancer of the larynx, and certain respiratory diseases including chronic bronchitis and emphysema. While the direct causal relationship between cigarette smoking and cardiovascular disease has not been definitely established, the Advisory Committee called smoking a "strongly suspected factor" and stated that it would be "more prudent to assume that the established association between cigarette smoking and coronary disease has causitive meaning than to suspend judgment until no uncertainly remains."

In view of the serious dangers involved in cigarette smoking, it seems to me the Federal Government has an obligation to make sure that every present or prospective smoker is aware of these hazards. In fact, it is astonishing that we have delayed so long. Changing Times magazine put it very succinctly in an article on cigarette advertising in December 1962, when it stated:

> In view of all that is known about cigarettes now, the freedom permitted cigarette advertising must be regarded as an anomaly, even in a Nation dedicated to free enterprise.
>
> The Federal Government maintains controls designed to prevent the sale of potentially dangerous drugs.
>
> Manufacturers are required by law to put warning statements on the labels of hazardous household items.
>
> Liquor advertising is closely circumscribed by Federal and State statutes.

The author went on to describe the efforts of Great Britain and other European countries in restricting cigarette advertising, conducting public information programs, and establishing antismoking clinics. He then commented, "Why other groups should have done so much and we so little is difficult to explain." Then comes the questions: "Are we more tolerant or just more apathetic?" "Are we so bemused by advertising that we have lost the capacity for either indignation or self-protection?"

I say we are not apathetic—that we have not lost the capacity for self-protection. The fact that this hearing has been scheduled is evidence that Congress has been aroused to the dangers involved in cigarette smoking and is ready to consider what action should be taken to protect the public interest. While there may have been some justification for a "go slow" approach in the past before the medical evidence was conclusive, there is no such justification now. The leadership of this committee is to be congratulated for undertaking a study of this difficult issue, and I hope that the final result will be the passage of legislation to insure the public's awareness of the dangers of cigarette smoking.

I am realistic enough to know that warning labels on cigarette packages will not cause most smokers to quit smoking, nor will they deter every prospective young smoker from beginning the practice. I agree,

however, with the authors of the recent Consumer's Union report on "Smoking and the Public Interest," who stated that "* * * as a part of a network of reminders, they (labeling requirements) might contribute to the total effectiveness of any overall campaign to meet the health problems posed by smoking." At least, as in the case of drugs, household poisons, and other dangerous substances, the Government would be fulfilling its responsibility of informing the public of the health threat involved. Moreover, I believe the public interest here is sufficient to justify preemption by the Federal Government so that the citizens of all States are uniformly protected and informed with regard to cigarettes. Furthermore, it seems to me that legislation at the national level offers definite advantages to cigarette manufacturers in that if State and local governments should enact a wide variety of confusing and conflicting requirements, the companies would be faced with a very difficult situation.

Mr. Chairman, I realize that many varied legislative proposals have been made in connection with cigarette advertising and labeling. I believe, however, that my bill, H.R. 7476, offers a simple and effective means of keeping the consumer aware of the dangers involved in smoking. As you may know, this approach to the problem has been endorsed by the American Cancer Society and a number of State medical societies. Such an act could be easily enforced and would require no complex regulations or uniform testing procedures. Most important, however, is the fact that this would be a constant reminder to smokers long after the interest in the report on "Smoking and Health" has subsided.

Mr. Chairman, I have appreciated the opportunity to testify today in behalf of my bill, and I hope the committee will give it favorable consideration.

The CHAIRMAN. Are there any questions? If not, we thank you, Mr. Grabowski.

Mr. GRABOWSKI. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is our colleague from North Carolina, the Honorable Roy A. Taylor. Mr. Taylor, we are happy to have you here.

STATEMENT OF HON. ROY A. TAYLOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. TAYLOR. I noticed from the press release that there are 10 bills pending before this committee embracing several different approaches to the problem of cigarette smoking and health and that the purpose of this hearing is to determine whether any action is needed by Congress; and if so, what action should be taken.

I know that the introduction of these 10 bills and the referral to this committee places on the committee a responsibility, and I commend you on facing that responsibility as you are today.

We must give first consideration to the health of our citizens, and provide maximum assurances of health for tobacco users. Also, we must give consideration to the welfare of the tobacco industry on which 17 million American citizens depend for all or part of their livelihood.

Tobacco is this Nation's fifth largest cash crop and stands third in America's agricultural exports. Both from the standpoint of produc-

tion and manufacture, tobacco means more to the economy of North Carolina than to any other State.

In facing the problem we can assume that confirmed smokers will continue to smoke, which causes the health problem created to be national in scope.

We need to learn how to make smoking safer. We need to know what substances in tobacco smoke cause lung cancer or other disabilities. We need to know whether the cancer-producing compounds come from the nicotine in the tobacco or from the use of chemicals and fertilizer or from a combination of these or other factors.

The answer lies in research. If there are characteristics in the tobacco plant that should be strengthened or eliminated, we want to know what they are.

I am anxious that we find the right answer to the tobacco smoking problem. I favor extensive research to provide maximum assurance of health for tobacco users. I believe that deceptive advertising by tobacco companies and by other American companies and businesses should be prohibited.

However, I am very much of the opinion that mandatory health hazard labeling of cigarettes, which is proposed in some of the bills before the committee, is untimely and unwise.

When I was a boy I was taught in the home and in the school that drinking alcoholic beverages, smoking, and even coffee drinking, were injurious to a young person's health. That was a long time ago, but during all of these years mandatory health hazard labeling of any of these products has not been required.

I favor any reasonable action to protect the health of American citizens, but I doubt that action requiring mandatory hazard labeling of cigarettes is the answer.

For many months, the press has given wide and full publicity to the dangers of smoking. The people are now alerted to these dangers and are free to make their own decisions.

American cigarettes compete with foreign-produced cigarettes on world markets. There is no evidence that our cigarettes are more dangerous to health than those produced abroad, but the hazard label would give that impression and would unnecessarily injure tobacco exports. Mr. Chairman, I believe that we need more research, more study, and more information before drastic action of the type proposed is taken.

I believe that it is premature to require this labeling before the research is completed. We would be getting the cart before the horse. Before such drastic action is taken, we need clearer evidence as to what is needed, and research and study is the answer. Legislation is pending before the House Agriculture Committee which would authorize and direct the Secretary of Agriculture to conduct research into the quality and health factors and materials used in cigarettes and other tobacco products. I am supporting this legislation enthusiastically.

The CHAIRMAN. We appreciate your appearance and testimony, Mr. Taylor.

Mr. TAYLOR. Thank you for the opportunity, Mr. Chairman.

The CHAIRMAN. Dr. Luther L. Terry, Surgeon General of the U.S. Public Health Service. Dr. Terry.

STATEMENT OF DR. LUTHER L. TERRY, SURGEON GENERAL, U.S. PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY JOHN L. HARVEY, DEPUTY COMMISSIONER, FOOD AND DRUG ADMINISTRATION; AND THEODORE ELLENBOGEN, DEPUTY CHIEF, LEGISLATION DIVISION, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Dr. TERRY. Thank you, sir.

Mr. Chairman, I am grateful for the opportunity of appearing before your committee today, on behalf of the Department of Health, Education, and Welfare, to discuss the problem of smoking and health, which, as you are aware, is one of my very great interests and concerns as Surgeon General of the Public Health Service.

Mr. Chairman, I have with me Deputy Commissioner John L. Harvey of the Food and Drug Administration, andl Mr. Theodore Ellenbogen who is Deputy Chief of the Legislation Division in the Office of the General Counsel of the Department.

The CHAIRMAN. Very well, we are glad to have these gentlemen.

Dr. TERRY. In addition, I have a prepared statement which, if I may, I would like to read to the committee.

As indicated in the interim report of our Department to you, the bills pending before this committee may be broadly classified into proposals for regulatory action and proposals for intensification and expansion of research activity and of public information and education programs in the field of smoking and health. Most of the regulatory bills would require cautionary or informative labeling and advertising of cigarettes, while two of the bills would extend the coverage of the Food, Drug, and Cosmetic Act to all smoking products; this would be done, primarily, by inserting provisions on adulteration and misbranding of such products that are, basically, patterned after corresponding provisions of the act governing cosmetics.

In announcing these hearings, you stated, Mr. Chairman, that it was their purpose to determine—

> whether any action by the Congress is warranted in this field in the interest of the public health, and if such action is found to be needed, what approach is most desirable in the public interest.

I take it that, in speaking of possible congressional action, you had in mind the question of the desirability of substantive legislation as distinguished from the question of the need for appropriations, though the two, are, of course, related where substantive authority contains an appropriation ceiling.

Let me briefly summarize here, Mr. Chairman, the views of our Department on these questions. A fuller statement will be found in the Secretary's interim report to you, which you have entered into the record.

1. Insofar as the Department's plans for nonregulatory action are concerned, we can see no need, at the moment, for new substantive legislative authority, though we intend to explore further the desirability of specific legislation to declare and emphasize national policy in this matter.

2. With respect to regulatory action, the legislative problem is less simple. The Federal Trade Commission has given notice of proposed Trade Regulation Rules to govern cigarette advertising and labeling under the basic provisions of the Federal Trade Commission Act relating to unlawful trade practices, and has held hearings thereon at which Assistant Surgeon General James M. Hundley testified.

The Commission has not yet announced its conclusions, but I understand that the Chairman of the Commission is scheduled to appear before this committee in the course of these hearings, and I assume that he will discuss, insofar as he considers it appropriate, the scope of the Commission's existing authority in this field. As explained in our interim report to you, however, it is the Department's view that, without prejudice to the Commission's existing authority, the problem of health protection in relation to advertising of cigarettes could be dealt with most effectively by appropriate addenda to those provisions of the Wheeler-Lea amendment to the Federal Trade Commission Act, enacted in 1938, that specifically deal with false or misleading advertising of food, drugs, or cosmetics.

The regulation of labeling of cigarette packages could, the Department believes, be more effectively dealt with by appropriate amendments to the Federal Hazardous Substances Labeling Act which our Department administers through the Food and Drug Administration, utilizing the kind of enforcement provisions, techniques, staff, and experience that have proven themselves under the Food and Drug Act after which the Hazardous Substances Labeling Act is in large measure patterned.

The Department intends to develop, in cooperation with interested agencies, specific legislative proposals to carry out these views.

It should be emphasized at this point that the Department welcomes the current efforts of the cigarette manufacturing industry to develop principles and procedures for policing its own advertising and labeling practices. To the extent that these principles and efforts meet the requirements of public policy as they may be inherent in existing legislation or included in new enactments, they will reduce the job of the agencies concerned with the enforcement of that policy.

Such efforts would not, however, in the Department's view, obviate the desirability of enacting specific regulatory authority to express those minimum standards that protection of the public interest requires.

3. In view of the need for further study as to the need for regulation of the ingredients that may be included in smoking products, we have no recommendation for regulatory authority on that matter. We do believe, however, that we should be given authority to require disclosure of information on such ingredients by manufacturers in order to facilitate needed research on these ingredients and to aid in exploring the need, if any, for regulation of such ingredients.

The bills pending before you will be helpful to the Department in developing more specific proposals, though none of them, in their present form, are entirely suited to carry out the approaches above suggested.

I would now like to comment on the nonregulatory bills for increased research, public education, and public information programs. Although we believe the basic legislative authorities available to the

Public Health Service are adequate to mount these programs, we would, of course, welcome any expression of legislative endorsement.

I emphasize, however, that at present, our major limitation is a lack of new funds and staff for some aspects of our planned activities. As to some of these activities, moreover, we may have to consider whether ceilings on appropriation authorizations in basic law need adjustment in this connection.

With present legislative authorities and financial resources, we have been able to maintain some headway against the problems of smoking and health which have been apparent for years. Our official program interest in this field goes back to 1956, when a study group composed of representatives from the Public Health Service, the American Cancer Society, and the American Heart Association concluded that there was a causal relationship between excessive smoking of cigarettes and lung cancer.

In 1957 and again in 1959, the then Surgeon General Leroy E. Burney stated as an official position of the Public Health Service that excessive smoking was one of the causative factors in lung cancer.

Since 1957, the Public Health Service in both its disease control and research programs has sponsored a variety of projects concerned with smoking and health problems. During fiscal 1964 alone we supported 85 projects at a cost of a total of $3.5 million. Most of these projects have been in basic research.

The effect of the January 1964 report of my expert Advisory Committee on Smoking and Health has been to strengthen our earlier position and emphasize the need for bolder and broader programs. The report did this by removing all doubts about the existence of an overall health hazard of cigarette smoking.

Since the report furnishes the scientific basis for the proposed legislation and our discussions today, I believe it worthwhile for me to repeat some of the major findings and conclusions of the report.

Following this highlighting of the findings, I would like to tell you what we are planning to do, and what we have already accomplished since release of the report with current financial and staff resources.

As you are well aware, the advisory committee concluded on the basis of "prolonged study and evaluation of many lines of converging evidence" that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action."

Some of the major findings and subsidiary conclusions of the advisory committee that contributed to this overall conclusion are as follows:

> Cigarette smoking is associated with a 70-percent increase in the age-specific death rates of males.
>
> In view of the continuing and mounting evidence from many sources, it is the judgment of the committee that cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate.

In general, the greater the number of cigarettes smoked daily, the higher the death rate.

> Cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs all other factors. The data for women, though less extensive, point in the same direction.

Evaluation of the evidence leads to the judgment that cigarette smoking is a significant factor in the causation of laryngeal cancer in the male.

Cigarette smoking is the most important of the causes of chronic bronchitis in the United States, and increases the risk of dying from chronic bronchitis.

A relationship exists between pulmonary emphysema and cigarette smoking but it has not been established that the relationship is causal. The smoking of cigarettes is also associated with an increased risk of dying from pulmonary emphysema.

Male cigarette smokers have a higher death rate from coronary artery disease than nonsmoking males, but it is not clear that the association has causal significance.

Epidemiological studies indicate an association between cigarette smoking and peptic ulcer which is greater for gastric than for duodenal ulcer.

The overwhelming evidence points to the conclusion that smoking—its beginning, habituation, and occasional discontinuation—is to a large extent psychologically and socially determined.

I am very pleased to say that not only did the Public Health Service on January 27, 1964, announce its full acceptance of the principal findings and conclusions of the report, but that the Secretary of Health, Education, and Welfare has accepted and adopted this report and its findings as Department policy. In line with this policy, the Public Health Service and the Children's Bureau are planning and initiating programs of remedial action in the health field.

The Public Health Service's plans include programs for public and professional information and education, disease control, and research. As I indicated earlier, I believe our basic legislative authority is sufficient to begin these activities, but we need additional appropriations and staff to mount full-scale operations.

In the area of public and professional information and education, we are establishing a National Clearinghouse on Smoking and Health as a unit of the Division of Chronic Diseases in the Bureau of State Services. Specific budgetary proposals have been made to support this and other planned activities.

As indicated to you in the Secretary's interim report to your committee, the clearinghouse will, in addition to performing other functions referred to in this report, be the central point of coordination, information, and liaison in the Service for programs and activities in this field. More specifically, it will—

(1) gather in one place all available information on the subject of smoking and health and disseminate such information on both a routine and special-request basis;

(2) conduct and support professional education activities on smoking and health for physicians, dentists, nurses, and other health personnel;

(3) conduct and support studies to determine the influence of medical and health professionals on their patients—for example, the significance of the authority role of physicians on changing patients' smoking attitudes and habits.

(4) serve as an information center on research and studies on smoking, and keep current the archives of the Advisory Committee on Smoking and Health;

(5) provide technical assistance and consultation on all health matters related to smoking to other Federal agencies, to State and local health agencies, and to voluntary and professional agencies;

(6) conduct and support urgently needed studies and demonstrations on how to influence individuals to refrain from initiating the smoking habit (primary prevention). An example would be the establishment of community laboratories in which public education and communication utilizing a variety of civic and health organizations will be brought to bear on the control of cigarette smoking;

(7) support appropriate studies and demonstrations on how to bring about discontinuation of the habit by smokers (secondary prevention), such as evaluation of smoking withdrawal clinics; and

(8) conduct behavioral and attitude surveys of smokers and nonsmokers which could then be kept up to date by simple repetitive checks of the national health survey to show trends.

In addition, the Public Health Service will cooperate with the office of Education and the Children's Bureau and many voluntary and professional health agencies in the development of public and professional educational programs in smoking and health.

We feel that it is important that national activities directed at informing the people of the health hazards of cigarette smoking be strengthened by eliminating duplication of effort and we are working in this direction.

The Children's Bureau will develop a program of studies and informational and educational activities in the field of smoking as it affects children and youth. This will include an intensive effort to insure that young people understand the current and future problems incident to smoking, so that they will have the maximum opportunity to make wise individual choices.

The Bureau plans to involve State committees on children and youth and State and local youth agencies in planning youth conferences and in serving as a source of information on techniques for holding such conferences. It also will develop a series of publications in this area directed toward both parents and youth.

The Public Health Service plans to initiate programs to control diseases, such as chronic bronchitis, emphysema, and other chronic respiratory diseases, that are known to be causes by or significantly associated with smoking and for which no control program now exists. These would be patterned after our existing control programs in heart disease and cancer and their purpose would be to stimulate the application of existing and future knowledge emerging from research to lessen the toll of these diseases.

Again, the general authority of section 314(c) of the Public Health Service Act would allow us to mount effectively these control programs, although, as I have indicated, a problem may well be encountered with respect to appropriation ceilings.

In addition to the research outlined above to be conducted or supported by the projected national clearinghouse on smoking and health, other research studies should be conducted by already existing organizations of the Department. The national clearinghouse will be responsible for keeping abreast of those investigations in order to better serve its primary roles.

The National Institutes of Health, in addition to its ongoing research projects bearing on smoking and health, will conduct or support—in coordination, where appropriate, with research planned by the Department of Agriculture—several types of research and investigation in an attempt to close some of the many important gaps in existing knowledge.

The National Institutes are planning and initiating studies on (1) the harmful constituents in tobacco and tobacco smoke; (2) the mechanisms by which tobacco smoke produces adverse health effects (including cancer); and (3) more precise evidence or definition of the role of cigarette smoking in cardiac, circulatory, and pulmonary diseases.

Our National Center for Health Statistics is planning several projects on smoking and health which would be incorporated into ongoing programs to give regular and more comprehensive information on changes in smoking habits and on the diseases and disabilities associated with smoking.

Some of these projects are: (1) An annual national survey of smoking habits; (2) periodic reports on mortality trends; and (3) statistics on morbidity and disability among smokers and nonsmokers.

On the strength of the unanimous judgment of my Advisory Committee, we have, since the release of the report, commenced on a limited scale, with our current funds and staff, a variety of informational, educational, and research activities.

As you know, the Advisory Committee's report has been widely distributed to Members of the Congress, Governors, the Nation's physicians, State and territorial health officers, medical schools, dental schools, schools of public health, medical libraries, senior medical, dental, and osteopathic students, voluntary health agencies, lay and scientific press, and many others.

So far, we have distributed more than a quarter of a million copies of the report to medical professionals and it is a bestseller at the Government Printing Office.

To get some feedback on professional reactions to the report, we have sent questionnaires with the reports to senior medical, dental, and osteopathic students.

We are in the process of developing a national survey on smoking behavior and smoking attitudes which will involve interviewing a nationwide sample of individuals.

We have recently completed and have begun evaluating a 4-week course for our own personnel who would like to control their cigarette consumption without necesarily giving it up completely. The first results were most gratifying, but we will need to measure the effectiveness for some time before making any recommendations.

In June the Public Health Service joined with the American Cancer Society and a number of other interested organizations to sponsor a national conference on smoking and youth. A month prior to this we took part in a similar conference sponsored by the Children's Bureau. In the one case we sought answers from youth itself about the most effective and feasible means of getting our message to them. In the June conference we sought similar advice from adult leadership groups dealing with youth. These groups ranged from the Girl Scouts to the American Association of Classroom Teachers.

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A variety of information booklets and films for professional and lay audiences about smoking and health are being developed. In addition, we are assembling a kit of materials for the guidance of physicians, health workers, and others in leadership positions. This kit will consist of selected leaflets of various organizations, reprints, and other background materials.

In addition to these educational and informational activities we have initiated several research projects in the gap areas I mentioned previously in which we plan to sponsor further investigation.

In summary, I would like to say that the Department of Health, Education, and Welfare recognizes the major public health hazard caused by cigarette smoking. The Department believes that additional regulatory and nonregulatory action is required. As I indicated to you earlier, the report of my Advisory Committee has been widely accepted and the Public Health Service has taken steps to implement the report through the development of broad programs in public and professional education and information, disease control, and research.

To fulfill our major nonregulatory responsibilities in the field of public health, we now have adequate basic legislative authority, although certain appropriation ceilings may require adjustment and additional funds and staff are needed if we are to meet fully this most challenging public health problem.

The publication in January of the Advisory Committee report on smoking and health marked an end to a long period of uncertainty, doubt, and controversy. We still have much to learn about how cigarette smoking damages the human body, but we know beyond reasonable doubt that damage is done.

We must not use the need for further research as an excuse for lack of action. On the basis of what we already know, there are many essential activities which we can and should be doing immediately.

With the overwhelmingly scientific evidence we now possess, I predict that the years ahead will constitute an era of action in which we will make significant progress in reducing the burden of disease, disability, and untimely death imposed upon millions of our people by cigarette smoking.

Thank you, Mr. Chairman. I will be pleased to answer any questions the committee may have.

The CHAIRMAN. Thank you, Dr. Terry.

Mr. Williams, do you have questions?

Mr. WILLIAMS. I have no questions, Mr. Chairman.

The CHAIRMAN. Mr. Roberts?

Mr. ROBERTS. Dr. Terry, you mentioned that you believe you have sufficient authority under legislation which is sponsored by this committee, known as the Federal Hazardous Substances Labeling Act of 1960. Do you mean by that that you think the provisions of that act would provide you with enough authority to go into the labeling situation?

Dr. TERRY. Mr. Roberts, I think you misunderstood me. I don't believe I said that. I did not intend to say that. If I may I would like to have Mr. Ellenbogen comment on this.

Mr. ROBERTS. Before he comments, let me see where I arrived at that conclusion. On page 3 you say that the regulation of labeling cigarette packages could, the Department believes, be more effectively

dealt with by appropriate amendments to the Federal Hazardous Substances Act which our Department administers through the Food and Drug Administration. Now let me change the question this way.

Dr. TERRY. Yes, sir.

Mr. ROBERTS. What amendments would you—do you have in mind?

Dr. TERRY. May Mr. Ellenbogen an swer that, Mr. Roberts?

Mr. ROBERTS. Yes, sir.

Mr. ELLENBOGEN. Sir, we have not fully explored the precise amendments, nor the precise content of the amendments, that would be needed in order to make the Federal Hazardous Substances Labeling Act a suitable vehicle for this purpose. The present provisions of the act, as you know, provide by statute exactly what the label of the hazardous substance package must say, subject to certain authority in the Secretary to vary these requirements. These provisions—and I would defer to Mr. Harvey on this—I am satisfied would not be fully suitable for the purpose that we have in mind here.

So we would have to decide in exploring this, first of all, whether the statute itself should set forth the words of the warning that should be on the package—assuming that there should be a warning—or whether this should be left to regulation. Also whether there should be authority to require ingredients to be stated on the label. The Secretary's interim report suggests that the statute itself not require this. So this is as far as we have gotten to this point. These hearings were called before we were ready to fully explore this matter. I don't know whether Mr. Harvey wants to say more on this point at this stage or not.

Mr. HARVEY. Mr. Chairman, and Mr. Roberts, the comment in the Surgeon General's statement was intended to reflect a view that the Hazardous Substances Labeling Act, with an amendment to clearly include tobacco and with a specific provision and declaration of public policy as to the kind of labeling it should have, the Hazardous Substances Labeling Act is a going concern with an organization equipped to enforce it and carry forward. With an amendment to include cigarettes it would be relatively simple to apply this act to the problem. I think it is reasonably clear that the act does not presently cover cigarettes or tobacco. Certainly the coverage of cigarettes was not in contemplation of the Congress at the time of the enactment of the bill and the law would need some modification to cover cigarettes properly because it deals separately with different classes of hazardous substances, such as toxic, corrosive, irritant and so forth.

Our view here is that the Hazardous Substances Labeling Act is a going vehicle on which cigarette labeling could readily be attached.

Mr. ROBERTS. I agree with you because I sponsored that act and I remember that we certainly did not at that time intend to cover tobacco. I don't think tobacco was even mentioned in the hearings.

It was designed to cover poison or toxic substances primarily.

Mr. HARVEY. Household chemicals primarily, I think.

Mr. ROBERTS. That is right. There is one sentence which Senator Neuberger mentioned in her testimony that might cover this particular subject. It is a definition, where you define hazardous substances as those which have the capacity to produce illness to man through inhalation. Are you familiar with that section?

Mr. HARVEY. Yes, I am familiar with it.

Mr. ROBERTS. I assume in that hearing we were talking about acids, or types of detergents which might possibly be injurious to lung tissue in the case of inhalation.

Mr. HARVEY. Actually, that sprung primarily out of deaths and injuries from using carbon tetrachloride in small rooms and confined spaces. That was the primary genesis of that inhalation insertion there, as you may recall.

Mr. ROBERTS. Going back to the statement of the Surgeon General. As I take it, other than what you mention about the possibility of some amendments in the field of labeling, you feel that the best thing the Government can do in this particular field is to enter into a program of education which would be primarily designed to keep young people from becoming addicted or to keep them from forming a habit of using tobacco in this particular way; is that right?

Dr. TERRY. I think, Mr. Roberts, that the program of the Public Health Service and the one we envision should be a two-pronged attack. In the first place one prong should be that of the dissemination of information and the conducting and supporting of educational campaigns. The second should be the research aspect, because, as I mentioned in my report to you, there are a lot of things that we do not know about this question yet. At the same time I would hasten to add that are a lot of things that we do know. One thing of which I am completely convinced is that cigarette smoking is a definite health hazard. Proceeding on this basis I think there are areas for action outside of research or in addition to continuing research on the subject.

Mr. ROBERTS. You mentioned that this sort of program would properly be covered by, as you call it, a projected national clearinghouse on smoking and health. Would it be your opinion that you already have some covering authority in this field which would not only include this alleged danger, but also dangers from drugs that may be similar to this thalidomide situation?

Dr. TERRY. Let me answer specifically with regard to this question, Mr. Roberts. The study of our staff and with the General Counsel has led us to believe that we have adequate authority for the establishment of such a clearinghouse and for conducting such a program in relationship to smoking and health.

Mr. ROBERTS. Since you have that authority, have you made any plans, or are you making any plans, to establish such a clearinghouse?

Dr. TERRY. Yes, we are making very definite plans, Mr. Roberts. Actually the basic organizational structure of the clearinghouse is already in operation and has been for several weeks. We have not, up until this moment, adopted the formal title, but we have been assembling part-time and a few full-time personnel to work toward the objectives which I outlined as the primary objectives for the national clearinghouse.

Mr. ROBERTS. I would like to commend the gentleman. I would like, with the chairman's permission, at some other date, to have the Surgeon General come before us and explain what this plan has accomplished. That is all I have.

The CHAIRMAN. Of course, the Surgeon General will be available almost any time the committee desires. I might say at this point that the Surgeon General advised me of this report just before it came out in January. Is that not true?

Dr. TERRY. That is right, sir.

The CHAIRMAN. As I understand it, at that time you were not in a position to state what the next phase would be.

Dr. TERRY. That is right, sir. At the time the report came out I indicated that to you.

The CHAIRMAN. But you did tell me at that time that within 60 days you thought you would be ready to advise us what your next step would be?

Dr. TERRY. Yes, sir.

The CHAIRMAN. It has been a lot more than 60 days since the report came out.

Dr. TERRY. Mr. Harris, I think we are in a position in the Public Health Service to tell you what we need to do. I think we need to move forward with a two-pronged attack—information and education—and in certain instances expand our research programs.

The CHAIRMAN. It certainly raises a lot of questions, Doctor, and I don't intend to take the time of the other members of the committee right now. Each answer raises another question because you said, as you concluded your statement, we must not use the need for further research as an excuse for lack of action.

Dr. TERRY. That is right.

The CHAIRMAN. Now you say you need further research.

Dr. TERRY. I don't find any conflict between those statements, Mr. Chairman.

The CHAIRMAN. What is your authority following up on Mr. Roberts' question? Would you include it in the record at this point, as to what that authority is?

Dr. TERRY. I would be glad to submit it, Mr. Chairman. It is under sections 301, 314(c), 316, and other sections of the Public Health Service Act.

The CHAIRMAN. I would like to have it included at this point in the record in order that we can see what history of the authority was and now just how it does relate.

Dr. TERRY. If we may, we will be glad to submit it to you.

(The document referred to follows:)

THE SURGEON GENERAL'S AUTHORITY UNDER THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 201 ET SEQ.) APPLICABLE TO SMOKING AND HEALTH

1. NATIONAL CLEARINGHOUSE

Section 202 of the Public Health Service Act (42 U.S.C. 203) authorizes the Surgeon General to establish new administrative units within any division of a bureau of the Public Health Service if he finds that such unit is necessary to carry out any function of the Service that, by authority of such section, he has assigned to such bureau.

The functions of the Surgeon General that may be assigned to the proposed clearinghouse, to the extent they involve smoking and health, are authorized by: (1) the Surgeon General's statutory obligation to issue, from time to time, information related to the public health (sec. 315, Public Health Service Act; 42 U.S.C. 247); (2) the authority to collect and disseminate, through publications and other appropriate means, information as to, and the practical application of, research, investigations, or demonstrations relating to the cause, diagnosis, treatment, control, or prevention of any physical or mental disease or impairment of man (sec. 301, Public Health Service Act; 42 U.S.C. 241)—this authority has been construed to include the conduct and support of research into more effective methods for public or professional educational or informational activities (Comp. Gen. Dec., Mar. 4, 1964, B–153075); and (3) the authority to assist

States and localities with their health service programs and to advise States on matters related to the public health (sec. 311, Public Health Service Act; 42 U.S.C. 243).

2. CONTROL PROGRAMS—STATE AND COMMUNITY

Within an overall annual appropriation authorization of $50 million, section 314(c) of the Public Health Service Act (42 U.S.C. 246(c)) provides for grants to assist States and their political subdivisions to establish and maintain public health services, including the conduct of demonstrations. Such State or local services and demonstrations may include control programs for diseases related to smoking that are not covered by such existing programs as those for cancer control now supported under this same authority. In addition, section 316, Public Health Service Act (42 U.S.C. Supp. 247a) authorizes appropriations of $10 million annually for project grants to States or other public or nonprofit agencies for studies and demonstrations looking to development of new or improved methods providing health services outside the hospital. Exploration of the effectiveness of community control programs related to smoking, including health educational services, could be supported under this authority.

3. RESEARCH AND STATISTICS

The conduct and support of research on any aspect of the relationship of smoking and health is authorized by section 301 of the act (42 U.S.C. 241) either through an appropriate institute of the National Institutes of Health; such as, the National Cancer Institute or the National Heart Institute, or through other existing units of the Service depending on the nature of the research project. In addition, the continuing, nationwide collection of statistical data on the nature, extent, duration, and economic impact of any illness or disability is authorized by section 305, Public Health Service Act (42 U.S.C. 242c). This is the basis for the national health survey which may thus include collection of data related to smoking and health.

The CHAIRMAN. Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

Dr. Terry, at the top of page 4, you say enacting specific regulatory authority to express those minimum standards. Do you have a recommendation on the minimum standards?

Dr. TERRY. No, sir; we do not have at this time.

Mr. YOUNGER. Why?

Dr. TERRY. Because the Department has not yet arrived at detailed conclusions as to what would be the proper standards to recommend to the Congress.

Mr. YOUNGER. Following up on the question of the chairman, as I understand it when the report came out, you intimated that within 60 days it would be all right for the committee to conduct hearings and you would be ready for them. Am I correct in that?

Dr. TERRY. Mr. Younger, I think you must appreciate the fact that I have the authority to speak only for the Public Health Service. We were ready then; we are ready now. This question of regulation, in our opinion, does not fall within the purview of the Public Health Service and, therefore, is not our direct responsibility, though we do feel that we con contribute in terms of a discussion of the needs in that direction.

Mr. YOUNGER. I thought you were expressing here the standard that you were going to recommend from your Department when you mentioned the minimum standards. Did you mean by that paragraph that you are referring to as standards that were going to be set by the Federal Trade Commission? You don't make a distinction there.

Dr. TERRY. The thing I am saying is that those have not been formulated by the Department to the degree where the Department is prepared to present them to you, Mr. Younger.

Mr. YOUNGER. On page 9, you mention evaluation of smoking withdrawal clinics. What do you have in mind as a smoking withdrawal clinic?

Dr. TERRY. I am talking about a type of operation in which physicians and/or other health personnel would assist individuals in discontinuing smoking and, at the same time, study their reactions and evaluate their response to this advice and assistance.

Mr. YOUNGER. Do you conclude that the smoking habit is comparable to the drug habit or to alcoholism and has to be treated in a clinic rather than a person's own willpower?

Dr. TERRY. We have not referred to this as an addiction, as it is very commonly used in relationship to addicting drugs, and in many instances, in relationship to alcohol. I think this is quite a different problem than either one of those, Mr. Younger.

Mr. YOUNGER. Would you operate your withdrawal clinics differently than the drug clinics?

Dr. TERRY. I think they would be operated in many varying ways in order to face up to the problem and determine what would be the most effective way of assisting an individual.

Mr. YOUNGER. On page 13 you are talking about your own Department. "Those who would like to control this cigarette consumption without necessarily giving it up completely." In other words, a little cigarette smoking is not bad?

Dr. TERRY. Our committee reported, Mr. Chairman, that there was a direct relationship between the amount of smoking and its effect upon health. Therefore, I think one must conclude from this that the less one smokes the less likely will there be health effects.

Mr. YOUNGER. Have you any standard as to how many cigarettes a day could be smoked and not interfere with your health?

Dr. TERRY. I have one standard and that is: No cigarettes, Mr. Younger.

Mr. YOUNGER. Why do you say that you are going to control your own Department in cigarette consumption without necessarily giving it up completely? You are not asking them to give it up completely?

Dr. TERRY. I am not asking anybody to give it up completely, Mr. Younger. I am merely advising you and the rest of the country as a physician and in my responsible position.

The CHAIRMAN. Would the gentleman yield there?

Mr. YOUNGER. Yes; gladly, Mr. Chairman.

The CHAIRMAN. That raises a very interesting question. I want to say that any questions I might ask are no indication whatsoever that I am trying to raise implications. I think you are to be commended for all the effort you have made. Some of the suggestions you make also raise implications, in my judgment. Mr. Younger has just proposed a subject that raises a question in my mind. You say you are not trying to tell anybody what to do. A government with an agency as big and powerful as your agency can have tremendous influence in many ways, and a lot of power. You said in your statement, on page 9, that among other things, on this clearinghouse problem that you are suggesting, that your agency will conduct and support studies to determine the influence of professional medical and health personnel on their patients.

I think that would be a very interesting study. I would like to know what the report would be on that myself. I have heard a great deal about it. If it would be applicable to smoking, or as you say, to the attitudes and habits, that would be one thing. But if the influence happens to have any significant effect on this particular problem, obviously it would reach into many fields of activity, would it not?

Dr. TERRY. I presume such an interpretation could be made, Mr. Chairman.

The CHAIRMAN. You are trying to suggest here that you want authority and funds and staff to find out just how influential the doctors of the country are over their patients. Is that what you are suggesting?

Dr. TERRY. I think you are going beyond our intentions, Mr. Chairman. The thing that we are specifically referring to here is that we would like to know, and I think it is important to know in the development of our programs, that if a physician genuinely advises a patient to discontinue smoking, with a thousand such patients, what happens to those patients?

How many quit and why they quit.

The CHAIRMAN. I think it would be interesting if that information became available. There is no doubt about that. But it is also interesting that you tell us that your authority in the field arises out of certain authority which the Congress gave to the agency many years ago. What concerns me is that what you have in mind today is one thing, and it may look perfectly reasonable, desirable, and appropriate; but when such broad authority is extended then later on down the line we find Government agencies reaching back and saying here is what Congress said for us to do.

Just as it was with Mr. Roberts a moment ago. Only 4 years ago the Hazardous Substances Act was developed and there was no thought and I believe it was not even mentioned in the hearings or in the legislative history, yet here 4 years later arguments are made that that act covers cigarettes. That is the sort of thing that does cause me some concern with the regulatory agencies of the Government interpreting language so that it expands their broad general authority.

Mr. YOUNGER. Thank you, Mr. Chairman. I would like to have the record show also that my questions are not indicative of my smoking. I quit some 16 or 18 years ago.

I didn't need any clinic or anything else. I didn't need any advice from the reports of the Department. I just concluded that I would feel better and I quit after about 30 years of smoking every form of tobacco. That is not the point I am trying to get at.

Dr. TERRY. May I interrupt to compliment you upon your wisdom, sir?

Mr. YOUNGER. What I am wondering is in all of this program which you set out, how do you expect to get the cooperation? I am reminded of the very fine program that the administration set out and they were going to rehabilitate all of the rejectees of the draft. Now they find that the program has gone by the boards because only 17½ percent of the rejectees of the draft were even interested in answering the Government's letter. They didn't want to be rehabilitated, apparently. How are you going to reach these people and get the program on the road to stop a habit which you say is very strong, when we can't even get the rejectees of the draft to respond for rehabilitation?

Dr. TERRY. I just say we certainly will not be successful in prevailing upon anyone to quit smoking who does not basically wish to quit smoking. I think we have the basic responsibility to disseminate the information upon which a person can make an individual judgment, and then beyond that I think we as well as the rest of the medical and health profession have a responsibility to try to help that individual to do something if he wishes to do it.

Mr. YOUNGER. You have done that in the report that is now published? You have given the facts to the public as to the ill effects of smoking?

Dr. TERRY. In the report of the Advisory Committee? I think we have, sir.

Mr. YOUNGER. But that is not enough in your opinion. You have to expand your activities.

Dr. TERRY. That is right. I think this is only one step in the procedure.

Mr. YOUNGER. That is all, Mr. Chairman. Thank you very much.

The CHAIRMAN. Mr. Rogers of Texas.

Mr. ROGERS of Texas. Dr. Terry, with relationship to your conclusions about cigarette smoking, is it your personal feeling that a law should be passed prohibiting the shipment of tobacco in interstate commerce?

Dr. TERRY. No, sir.

Mr. ROGERS of Texas. Do you feel that it is very seriously detrimental to the health of any one who uses it?

Dr. TERRY. I think there is a definite and significant risk to the health of anyone who smokes cigarettes.

Mr. ROGERS of Texas. But I believe you stated that there is still a lot of things that we don't know in this picture?

Dr. TERRY. That is right.

Mr. ROGERS of Texas. And will require more research. I notice that most of your statement is confined to cigarette smoking, which I presume has to do with inhalation?

Dr. TERRY. Yes, sir.

Mr. ROGERS of Texas. In the research that has been performed have you done any research on tobacco in any form, that is, including tobacco, the use of snuff, pipe tobacco, cigarette tobacco, or is this research confined primarily to cigarettes?

Dr. TERRY. Mr. Rogers, the Advisory Committee report does not represent individual research that was done by the Committee during the time they were making the study. It represents a comprehensive review of the world's medical literature on the subject, a compilation of this literature and an evaluation of it. There are aspects that were studied by the Committee which have to do with cigar smoking, pipe smoking, including chewing tobacco and snuff.

Mr. ROGERS of Texas. This attention has been centered on cigarette smoking in this particular situation we are in now, is that right?

Dr. TERRY. That is right. It has been centered there because of all of the converging evidence brought together by the Committee, the most significantly incriminating had to do with cigarette smoking rather than the other types of the use of tobacco.

Mr. ROGERS of Texas. I am not expert on it but it is my understanding that you also inhale snuff?

Dr. TERRY. It depends on how you use it. There are several different ways. People sniff snuff and may inhale some. On the other hand the most common practice in this country is not to sniff it but to place it in the lower front teeth and lower lip where it is allowed to gradually dissolve over a period of time.

Mr. ROGERS of Texas. You have not reached any conclusion whether this practice, including chewing tobacco, is detrimental?

Dr. TERRY. No, sir, we have not.

Mr. ROGERS of Texas. Would the same be true with regard to cigars that, we will say, are not inhaled?

Dr. TERRY. This is difficult to try to evaluate, when you say cigars are not inhaled. The Committee in reviewing the literature available on the smoking of pipes and cigars could find only a slightly higher overall mortality rate and only slightly higher incidence of certain types of diseases. So the Committee did not feel that there was adequate evidence upon which they could incriminate cigar smoking and pipe smoking as clearly as they could and as they did cigarettes.

Mr. ROGERS of Texas. Would that indicate the paper was more to blame than the tobacco?

Dr. TERRY. I think the main thing it indicates is that we need to know a lot more about this particular subject, as well as to why people react differently to cigarette smoking. It is pretty generally recognized that with most people who never smoke cigarettes or rarely smoke cigarettes, when they smoke either a pipe or cigar they do not inhale very much.

Mr. ROGERS of Texas. Isn't it a fact, too, that there is a tremendous number of people who smoke cigarettes rather than cigars, pipes, or chew tobacco?

Dr. TERRY. Yes; this is true.

Mr. ROGERS of Texas. Was that taken into consideration?

Dr. TERRY. Yes; this was done on a ratio basis.

Mr. ROGERS of Texas. The point is this. You feel that the report you have from this literature provides definite evidence for the conclusion that cigarette smoking is detrimental to the health of the individual.

Dr. TERRY. Yes, sir; or may be to any one individual.

Mr. ROGERS of Texas. That is what I was coming to. Isn't it a fact, Doctor, that drinking whisky is detrimental?

Dr. TERRY. I would hesitate to make that broad statement. It depends on how much you drink, when you drink, and so forth and so on. Certainly alcohol in the form of whisky or any others may be very detrimental to health.

Mr. ROGERS of Texas. It might affect one individual differently from another, might it not?

Dr. TERRY. Some difference; yes, sir.

Mr. ROGERS of Texas. In other words, a slight amount of alcohol could cause some people to become ill, while it might take 2 quarts to make someone else ill?

Dr. TERRY. I will accept your judgment on that, sir.

Mr. ROGERS of Texas. I am asking for information.

Dr. TERRY. Certainly, as you well know, Mr. Rogers, there is quite a difference to the individual tolerance to alcohol; yes.

Mr. ROGERS of Texas. Isn't the same thing true with regard to cigarette smoking?

Dr. TERRY. This may be true. I do not know, sir.

Mr. ROGERS of Texas. Didn't you testify a minute ago that the fewer cigarettes you smoke the better your health would be?

Dr. TERRY. I beg your pardon?

Mr. ROGERS of Texas. Didn't you testify a minute ago that the fewer cigarettes you smoke the better your health would be?

Dr. TERRY. Yes, sir; basically I said that.

Mr. ROGERS of Texas. You suggested to Mr. Younger that he not smoke any and his health would be all right insofar as that particular situation is concerned. Doctor, if this thing has gone to the place where there is a definite conclusion that cigarette smoking is detrimental to public health, why is it necessary for you to go into an educational program that is going to cost an awfully lot of money? If it has reached that point and the American people are willing to accept the fact—I don't say they are, I don't think they are—that the Government ought to control what they do or what they don't do, why wouldn't it be possible to pursue the prevention of the use of heroin or marihuana by an educational program rather than a prohibition?

Dr. TERRY. There is much educational effort directed toward problems of narcotics and of narcotic addiction.

Mr. ROGERS of Texas. Yes; but you have criminal laws with regard to narcotics and the dealing in narcotics, do you not?

Dr. TERRY. Yes, sir; there are criminal laws in the field of narcotics.

Mr. ROGERS of Texas. Doctor, isn't it a fact, though, that the cigarette question is still in suspended animation insofar as a definite determination is concerned?

Dr. TERRY. There is no question in my mind and in the minds of our committee by its unanimous report that cigarette smoking constitutes a definite health hazard.

Mr. ROGERS of Texas. And the same would be true of cigars?

Dr. TERRY. I did not say that, sir. There may be or may not be a health hazard associated with cigars and pipe smoking. I don't think I know enough to say today.

Mr. ROGERS of Texas. What about whisky drinking or alcohol use?

Dr. TERRY. And more specifically what is the question?

Mr. ROGERS of Texas. Specifically, would you say the same thing with regard to the use of alcohol that you do with regard to the use of cigarettes?

Dr. TERRY. That the use of alcohol constitutes a health problem?

Mr. ROGERS of Texas. Yes.

Dr. TERRY. Overall in this country; yes, sir.

Mr. ROGERS of Texas. Do you have an educational program on that at the present time?

Dr. TERRY. There are many educational programs.

Mr. ROGERS of Texas. No; I mean the Public Health Service, similar to the kind you are talking about putting into effect?

Dr. TERRY. I can't specifically designate any such program with regard to alcohol. We have a great deal of research and study going on in the field of alcohol.

Mr. ROGERS of Texas. What I can't understand basically is why cigarettes were singled out, Doctor, when we know there are foods, drinks, everything?

Dr. TERRY. I don't think cigarettes have been singled out. There are many fields of public health in which we are sponsoring and assisting in educational programs, for example, tuberculosis, the control of venereal disease, and the control of many health problems. It has not been singled out in that respect.

Mr. SCHENCK. Would the gentleman yield?

Mr. ROGERS of Texas. I would be happy to.

Mr. SCHENCK. On all aircraft, as I understand it, the only thing that is permitted to be smoked is cigarettes.

Dr. TERRY. This is true on some aircraft. It varies.

Mr. SCHNECK. I understood that all aircraft prohibit the smoking of cigars and pipes. I wonder if you were going to attempt to get the aircraft people to change their rules and regulations.

Dr. TERRY. I have not attempted it yet, sir.

Mr. SCHNECK. I yield to Mr. Friedel.

Mr. FRIEDEL. Doctor, could you tell me why Senator Neuberger would rather have the Federal Trade Commission control the labeling rather than the Public Health Service? Her statement says that 2 weeks ago in New York, Surgeon General Terry told a conference of smoking and youth that if this current generation of children and youth takes up smoking, millions of them in later years will suffer needless disease and disability and will die before their time.

Why would she rather have it controlled by the Federal Trade Commission rather than the Public Health Service?

Dr. TERRY. Naturally I would prefer that you ask her that question because we have never discussed it. I didn't realize in advance that she was going to testify to this effect.

Mr. ROGERS of Texas. That is all, Mr. Chairman.

Thank you.

The CHAIRMAN. Mr. Rogers was asking you about other things that might be hazardous to health. I suppose we can enumerate a great many things, even eating?

Dr. TERRY. Yes, sir.

The CHAIRMAN. Did you happen to see the Garry Moore television show "I've Got a Secret" last night?

Dr. TERRY. I was not watching television last night.

The CHAIRMAN. Where this man that weighed 199 pounds, his secret was that he was given a suit of clothes by his employer for losing 50 pounds. Each time he lost 50 pounds he got a new suit of clothes. He has six suits of clothes there to show that he had lost 327 pounds over a period of a short time. Then he weighed 199 pounds. He lost 327 pounds. Would you say that was hazardous?

Dr. TERRY. His losing of weight?

The CHAIRMAN. His eating so much that caused him to have so much weight?

Dr. TERRY. I think it has been very clearly demonstrated, Mr. Chairman, that any significant weight above what one might establish as an optimum for an individual constitutes a health hazard.

The CHAIRMAN. Are you doing anything about educating the public of this hazard?

Dr. TERRY. Yes, we have put out information on this subject for a long time. Our people in the Heart Institute are particularly inter-

ested in this field, Mr. Chairman, because one of the very serious complications of being obese is cardiovascular disease.

Mr. GLENN. Mr. Surgeon General, on page 7 you say that male cigarette smokers have a higher death rate from coronary disease than nonsmoking males. It is not clear that the association has a causal significance. I had thought that a strong direct connection had been established between smoking and coronary arteriosclerosis. Is that so?

Dr. TERRY. I am quoting directly from the committee's report here. I was bringing out the point that I would say yes, there has been a strong association established between coronary disease and cigarette smoking. But I would agree with the committee that we do not yet know that this is cause and effect. Even if it is cause and effect we do not know the mechanism involved.

Mr. GLENN. I believe you said further that you are still going into this research in trying to discover whether there is a cause and effect?

Dr. TERRY. Yes. We feel that the problem of the chronic respiratory diseases such as chronic bronchitis and emphysema and coronary disease, are two areas which need to be explored a great deal more deeply.

Mr. GLENN. Thank you very much. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Jarman.

Mr. JARMAN. Doctor, I have one question. In referring to the findings of the advisory committee, you referred specifically to conclusions reached as to male smokers. The question occurred to me do you has less information on female smokers, or is there a difference in the conclusions?

Dr. TERRY. In my statement to the committee and in the smoking and health committee report we referred to cigarette smoking in relationship to sex in two particular parts. One was where cigarette smoking is causally related to lung cancer in men. In the next sentence the committee said the data for women, though less extensive, point in the same direction. In cardiovascular disease we do not have enough evidence to say even that the data on women point in the same direction.

Mr. JARMAN. I have just one other question at this time. You referred in your statement to appropriation ceilings and working within appropriation limitations. Have you reached any conclusion as to what additional funds and staff are needed in this field?

Dr. TERRY. We have some general evaluations which are being discussed with the Department at the present time, sir.

Mr. JARMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Cunningham.

Mr. CUNNINGHAM. Dr. Terry, one of the things that has concerned me a great deal is the problem of air pollution, the carbon monoxide fumes. They cause me no end of concern. I am wondering if in this study the inhalation of these carbon monoxide fumes was taken into consideration?

Dr. TERRY. Yes, sir, in the report of the advisory committee they devoted specific attention to the question of air pollution, and its effect or potential effect in relationship to the various aspects of smoking and health. This was taken into consideration.

Mr. CUNNINGHAM. Was that given any blame for this rise in the death rate you mention? All we hear about is cigarette smoking. Were not carbon monoxide fumes given any blame for this?

Dr. TERRY. The committee concluded that for the bulk of the population of the United States the relative importance of cigarette smoking as a cause of chronic broncho-pulmonary disease is much greater than atmospheric pollution exposure. Also, the committee concluded that cigarette smoking was the principal causal factor in the production of lung cancer in this country.

I might mention in that respect that there have been some reports which have appeared in the medical literature, for instance a German report, which appeared after our committee had made its report. However, this report was available in draft form to the committee before they reported. So it was taken into the evaluation and the conclusions of the committee.

Mr. CUNNINGHAM. Do you have any recommendations as to what to do about the carbon monoxide fumes?

Dr. TERRY. There are many factors in air pollution which are of importance of which carbon monoxide is only one.

Mr. CUNNINGHAM. Those of us who drive back and forth and walk here from and to the Capitol are exposed to those more than anything else.

Dr. TERRY. I think in answer to your question that this is one of the most serious problems we are facing in this country, the problem of air pollution and its control.

Mr. CUNNINGHAM. I certainly agree with you on that.

Dr. TERRY. Furthermore, I am overwhelmed at times with the responsibilities in this direction since, you realize, the Public Health Service has the large part of the responsibility for initiating, conducting, and supporting programs in the field of air pollution control. It is a tremendous problem. I think we are making progress but we are not making progress as rapidly as we would like to.

Mr. CUNNINGHAM. Thank you very much.

The CHAIRMAN. Mr. Kornegay, do you have any questions?

Mr. KORNEGAY. Thank you, Mr. Chairman. Dr. Terry, at the outset let me say that while I find myself in disagreement with you on some of these matters, I have a healthy respect for you and I appreciate very sincerely the effort you made and are making in this field and of, course, in the many other duties and responsibilities which you have as Surgeon General. Do I gather correctly from your statement on page 3 that you take the position that neither the Department of Health, Education, and Welfare nor the Federal Trade Commission presently has authority to brand or label the packages of cigarettes or to control the advertising there?

Dr. TERRY. It is the opinion of our group that we do not have such authority in existing laws governing the Public Health Service and Food and Drug Administration.

Mr. KORNEGAY. You suggest that in relation to the advertising of cigarettes that it would be dealt with most effectively by appropriate addenda to those provisions of the Wheeler-Lee amendment to the Federal Trade Commission Act. I take it, then, that you do not feel that the Federal Trade Commission presently has authority to go into the advertising of cigarettes?

Dr. TERRY. Mr. Kornegay, I said a few lines above that the Department's recommendation was "without prejudice to the Commission's existing authority." Frankly, I am not in a position to make a judgment on that authority.

Mr. KORNEGAY. Yes, sir; I understand that statement. By your statement you did not intend to prejudice the Commission in the matter.

Dr. TERRY. That is right.

Mr. KORNEGAY. I just wanted to find out if in your opinion they had the authority presently to go into the business of regulating advertising of cigarettes.

Dr. TERRY. I do not know, sir.

Mr. KORNEGAY. Which of the 10 bills that we have before us are you supporting, Dr. Terry?

Dr. TERRY. I am not supporting any one bill in its totality.

Mr. KORNEGAY. Were any of them introduced at your request?

Dr. TERRY. No, sir.

Mr. KORNEGAY. Is there any other similar legislation pending presently in the Congress?

Dr. TERRY. Not from the Department of Health, Education, and Welfare.

Mr. KORNEGAY. From your Department?

Dr. TERRY. No, sir.

Mr. KORNEGAY. Do you know of any that might be pending which is sponsored by or has been introduced at the suggestion of the Federal Trade Commission?

Dr. TERRY. I do not know of any, sir.

Mr. KORNEGAY. Thank you very much. In other words, your statement today is a report to the committee in connection with the report of the Advisory Committee to you on smoking and health and what your Department is presently doing?

Dr. TERRY. What our Department is presently doing and what we would like to do or what we feel we should do.

Mr. KORNEGAY. Are you specifically requesting any legislation?

Dr. TERRY. Not at this time, sir.

Mr. KORNEGAY. Dr. Terry, as a matter of fact, the report on smoking and health was not original research with the 15-man Advisory Committee.

Dr. TERRY. That is correct; it was not original research.

Mr. KORNEGAY. It was the pulling together, the compilation of past studies made by various and sundry groups, institutes, and research organizations throughout the country.

Dr. TERRY. It was an attempt to make the most comprehensive review of all of the existing scientific information on the question of smoking and health throughout the world, sir.

Mr. KORNEGAY. In other words, from other countries.

Dr. TERRY. That is right, sir.

Mr. KORNEGAY. Particularly Germany, I believe.

Dr. TERRY. Yes, sir.

Mr. KORNEGAY. Is there any clinical or laboratory work in this report?

Dr. TERRY. There are reports of many laboratory studies. It is a highly technical report on various aspects of reported scientific studies.

Mr. KORNEGAY. I am talking about laboratory work or clinical studies made on tobacco itself in an effort to determine what agent, if any, it might contain that is detrimental to the health.

Dr. TERRY. There are many reports which touch on this.

Mr. KORNEGAY. I think you and I both agree that enough research has not been done.

Dr. TERRY. Yes, sir.

Mr. KORNEGAY. And that there are many gaps, as I think you stated in your statement, that need to be filled before we will have the complete picture.

Dr. TERRY. Yes, sir.

Mr. KORNEGAY. You, of course, are familiar with the industry's advertising code which the cigarette industry got together and proposed and have implemented by the appointment of Gov. Robert Meyner, of New Jersey, as the administrator for the code.

Dr. TERRY. Yes, sir.

Mr. KORNEGAY. What is your feeling with reference to this code?

Dr. TERRY. My feeling with reference to this code is that it is a forward step in the right direction. I am happy to see the industry voluntarily take such a step.

Mr. KORNEGAY. It is a rather all-inclusive or full treatment of the area that it is designed to cover, too, isn't it, Dr. Terry?

Dr. TERRY. It all depends on how you evaluate the area that it is intended to cover.

Mr. KORNEGAY. What do you think of the sections relating particularly to minors or youth on the question of smoking, prohibiting, for example, all advertising in college, school or university media, including athletic, theatrical, and other programs?

Dr. TERRY. I think this is an approach in the right direction.

Mr. KORNEGAY. I believe it also forbids the distribution of sample cigarettes or the conducting of any sort of promotional activity on college or school campuses.

Dr. TERRY. With respect to the cigarette industry I must say that even before this report came out there had been a very great decrease in the representation and advertising of cigarettes on college campuses, which was a voluntary action by the industry. But this goes further.

Mr. KORNEGAY. Yes. Anyway, it would be indicative that they are making an honest effort to police their own industry insofar as advertising is concerned, insofar as promoting sales of cigarettes among the youth and the young people of the country are concerned.

Dr. TERRY. I would like to say it is a significant step in the right direction and that the industry should be recognized for having taken this voluntary step. However, as I said in my report, Mr. Kornegay, beginning with the last line on page 3, such efforts would not, however, in the Department's view, obviate the desirability of enacting specific regulatory authority to express those minimum standards that protection of the public interest requires.

In other words, yes; I think this is fine and I think it is a responsible step but I do not conceive at the present time that it is all that is necessary, sir.

Mr. KORNEGAY. I believe, in answer to earlier questions, you do not today have any minimum standards to suggest to the committee.

Dr. TERRY. That is correct, sir.

Mr. KORNEGAY. Dr. Terry, last month, I believe, Dr. John Hickam, who is a member of your Advisory Committee, went down to my State of North Carolina and made a speech to the North Carolina Heart Association. He stated that he felt the Advisory Committee's report was a bit strong, and that the more the statistics were studied the less clear their meaning was. This was reported in the Charlotte Observer on May 21, 1964, and also by the Associated Press.

What comment, if any, would you care to make to the committee in connection with the statement of Dr. Hickam?

Dr. TERRY. In the first place, I did not know that Dr. Hickam had made such a statement. I hope—I trust—that the quotation is correct. Dr. Hickam, as a member of the committee, had adequate opportunity to object to any part and to the conclusions of the committee. He did not. On the morning of January 11, just before the report was to be issued, I was sitting in a side room in the State Department just off the auditorium and I specifically confronted each member of the committee, and they were all there, and I said: "This is a very important question to me, to know whether you all agree with the general conclusions of this report. Do you?" And each man said that he did.

Now Dr. Hickam has a right to change his mind and it is entirely possible that, if he made the statement, that he has changed his mind in certain respects since that time. But he personally assured me on that morning of January 11, 1964, that he agreed with the overall conclusions and findings of the report.

Mr. KORNEGAY. It would appear certainly from this speech that he made in North Carolina that he had changed his mind to some extent about the report.

Dr. TERRY. Presuming the quotation is correct.

Mr. KORNEGAY. I am presuming that.

Dr. TERRY. He has not said anything to me about it and I did not read anything. I did not know there was any change in his attitude.

Mr. KORNEGAY. Thank you very much, Dr. Terry.

Dr. TERRY. Thank you.

The CHAIRMAN. Mr. Broyhill, do you have any questions?

Mr. BROYHILL. I was interested, Dr. Terry, in an answer to a question put to you by Mr. Kornegay, that you do not recommend any legislation at this time. Is that correct?

Dr. TERRY. That is correct, sir.

Mr. BROYHILL. Yet on page 3 you do say that the regulation of labeling of cigarette packages could be more effectively dealt with by appropriate amendments to the Federal Hazardous Substance Labeling Act. This, in my mind, is conflicting with your last statement.

Dr. TERRY. In the next paragraph we say that the Department intends to develop, in cooperation with the interested agencies, specific legislative proposals to carry out these views. It simply means that the Department has not reached a conclusion as to the specific legislation which it would like to recommend. In all fairness to this committee and to the Congress, in saying that we do not have proposals at this time, we do not mean that we are completely closing the door because we are not. We expect to study this more. I think it is likely that the Department will make specific recommendations with regards to the labeling aspects.

Mr. BROYHILL. Would this be soon or would it be in the considerable future? We are being asked to do something about this in the near future, it appears. I wonder what your proposal would be at this time.

Dr. TERRY. I wonder if Mr. Harvey has any comment on that. I would answer by saying that, insofar as I know, we do not expect to have such a proposal in the immediate future.

Mr. HARVEY. So far as I know, that is correct, Dr. Terry. I do not have from the Department any instructions with regard to the preparation of draft legislation at this time.

Mr. KORNEGAY. Would the gentleman yield there?

Mr. BROYHILL. I would be glad to yield.

Mr. KORNEGAY. I take it, at the present time, you gentlemen are not advocating the labeling of cigarettes inasmuch as you admit you now do not have the authority to do it and you are not asking for authority to do it. Is that a correct assumption?

Dr. TERRY. This is not specifically supported or denied in the departmental report.

Mr. KORNEGAY. In other words, you just take no position on it at the present time?

Mr. ELLENBOGEN. Do you mind, sir, if I comment?

Mr. KORNEGAY. I wish you would.

Mr. ELLENBOGEN. The interim report of the Department and the Secretary, as well as the Surgeon General's testimony, states in a very broad, general way, that the Department has concluded that there should be legislation. However, as we have said before, we have not yet developed the details and the specifics of that legislation that we would propose. Also, of course, after we have done so within the Department, it will require consultation with other interested agencies in the executive branch.

Mr. KORNEGAY. That was my question.. I say at the present time: You are not here today advocating the labeling of cigarettes?

Mr ELLENBOGEN. We are here today advocating the principle.

Mr. KORNEGAY. Yet, at the same time, you admit you have no authority to do it and you are not asking the Congress for legislation which would give you the authority to do it.

Mr. ELLENBOGEN. That is right, at this line. That is an interim report, because, as the hearings were suddenly called, we had not reached the point where we have specific detailed legislative proposals. But at least the Secretary has reached certain conclusions as to the general approach that is desirable.

Mr. KORNEGAY. That is all. Thank you for yielding.

Mr. BROYHILL, Does this mean that you are advocating that the Federal Trade Commission enact rules and regulations in this area?

Dr. TERRY. No, sir; I am making no recommendations at all for the Federal Trade Commission with respect to rulemaking.

Mr. BROYHILL. Would that mean you would be in conflict with the FTC, if there are rules and regulations proposed in this area, that you would prefer that the Public Health Service have jurisdiction over them?

Dr. TERRY. On the basis of the nature of the problem and the existing legislation, which covers the control of advertising and of labeling, we felt that such responsibilities should fall into the pattern which

now exists with regards to other controls exercised by the Federal Government.

Mr. BROYHILL. Mr. Chairman, this is certainly interesting information that has been brought out. Certainly Dr. Terry has given us a very fine report of what he and the Public Health Service are doing in this area as far as information, education, and research is concerned. However, it was my impression that we were holding these hearings to consider legislation. I certainly feel that we should have some expression from the Department as to their feeling on the legislative proposals or language.

The CHAIRMAN. Of course, it is the responsibility of the Department to give their views on pending legislation. There has been reference two or three times about the hearings being suddenly called, and, I want to say, that is completely erroneous. There is no basis for it whatsoever. I, myself, have talked to you, Doctor, about it, and I made one trip to see the Secretary with other members of the committee. That has not been just in the last day or two or week or two or month or two. These have also been bills pending before this committee since July 10, 1963.

I have not introduced a bill and I have not been asked to introduce a bill by your Department or the administration on it. I do think in view of the fact that there have been so many requests from so many sponsors of the bills, and we have deferred these hearings, in part because everybody has been "getting into the act," that the time for these hearings is certainly appropriate and reasonable.

The Department has given a report which is in the record. It was requested as it always is at the time the legislation is introduced. It has been requested from the Department as far as one of these bills is concerned since July 1963. The others from the date they were introduced, beginning the early part of this year in January and February.

Mr. Van Deerlin?

Mr. VAN DEERLIN. Mr. Chairman, just to make it absolutely certain, I would like to ask Dr. Terry: If we were to ask the most responsible course you could urge upon the committee at this time, it would be to take no action in this field?

Dr. TERRY. I do not think this is what I would evaluate as responsible action. I think, very clearly, we are going to need to know the intent of the Congress with regard to the support of our education programs, with the development and expansion of our research programs. I think, as your hearings proceed, you will receive recommendations with regard to the specific legislation which you will have to decide.

Mr. VAN DEERLIN. We have 11 bills before us, Dr. Terry, and you have indicated support for none of them. In the absence of a very strong urging from you and from the agencies of government, I would not be inclined to move on this as a member of this committee. So I just want to know: Is it your advice that we wait a while and get some more reports and some more bills, perhaps?

Dr. TERRY. It is difficult to know how to advise you broadly in this respect. We have indicated that in terms of any legislative authority that we may need that we are not ready to present the specific details at this time. Therefore, insofar as the Department is concerned, I

would have to say that we do not, at this time, have any detailed legislative recommendations to give you with regard to regulation of advertising, labeling, and so forth.

Mr. BROTZMAN. Would the gentleman yield?

Mr. VAN DEERLIN. I certainly will.

Mr. BROTZMAN. Doctor, when do you expect some specific proposals before the Congress? As I view this, I wonder what progress is being made and what is being done. I think this is what the committee is asking here.

Dr. TERRY. I cannot be sure when it will be. I should also say this: This is a problem, that is a big problem, that is not going to be solved today, tomorrow, or by this session of Congress.

At the same time this does not give us an excuse for dragging our feet. We in the Department are attempting not to do this. But the amount of consultation that is necessary between not only the agencies in the Department but in consulting with other agencies and departments of the Government is such that I just can't tell you when the Department will have a specific proposal.

Mr. BROTZMAN. I yield back to the gentleman.

Mr. VAN DEERLIN. I am through.

The CHAIRMAN. Is the Department opposed to all these bills?

Dr. TERRY. No, sir. I think, as I indicated in my presentation to you and was indicated in the Secretary's report to you, there are many features in many of these bills that are acceptable and endorsed by the Department.

Mr. BROTZMAN. I have one medical question, Dr. Terry. I just wondered about this one thing as I read your statement here. If you take tobacco or nicotine perhaps into your system either by inhalation or by sniffing snuff, or absorbing chewing tobacco, is this a stimulant or a depressant?

Dr. TERRY. I think you should make some differentiation when you talk about tobacco and nicotine. Nicotine is merely one constituent of tobacco. There are many constituents in its native state and there are other constituents which are formed when it burns under certain circumstances.

Nicotine generally could be spoken of as a stimulant in part, with large quantities causing depression. Yes; if you have enough, it is a permanent depression.

Mr. BROTZMAN. Really, my question is, Is this relative to the habit? From your studies, Doctor, is the habit a partially physiological dependence such as in the case of heroin, or is it a psychological dependence, or is it a combination of these factors?

Dr. TERRY. I think it is a combination of these factors.

The committee in its findings mentioned the question of the psychological and social aspects of smoking. Admittedly, there are physiological effects as well as psychological and social effects. You will find a great difference of opinion among scientists and physicians, as to which is the more important.

But I think the best we could say overall at this time is that it is a combined problem in many cases, if not most.

Mr. BROTZMAN. Now my last question. This is a legal question. I notice you allude to the Federal Hazardous Substance Labeling Act in your testimony and I think Senator Neuberger did, also, in her open-

ing statement. I believe Mr. Harvey, or someone, stated why the act as presently constituted would not be applicable to the present problem.

I have not read this law for quite a while but my question is: Does this law have civil penalties, criminal penalties, or both?

Mr. ELLENBOGEN. This law is patterned in its enforcement provisions after the Federal Food, Drug, and Cosmetic Act, so it contains both criminal sanctions and sanctions by way of injunction and sanctions by way of seizure. The latter two are civil; the first is criminal.

Mr. BROTZMAN. I have no further questions, Mr. Chairman.

The CHAIRMAN. Mr. Rooney?

Mr. ROONEY. I have one or two questions, Mr. Chairman.

Dr. Terry, first of all I would like to commend you for your statement. It is rather conclusive, as far as the Surgeon General's Office is concerned, with the effect that tobacco does have on the average individual. I guess I am not a typical American because I never started to smoke until your report came out.

I don't know whether my recent marriage made a difference. I don't inhale tobacco. Does that have the adverse effect or any effect? Have you come up with any conclusive findings in that respect? The reason for that question is, as I said earlier, your statement is rather conclusive that discontinuing the use of tobacco is practically a cure-all for any internal disorders. But the tobacco industry does represent a vital segment of our economy. Unlike Congressman Kornegay, I don't have that problem in my district.

Can you not foresee any hope that a good educational program can salvage the tobacco industry? Not only does it employ hundreds of thousands of people, but it has an adverse effect on my own Commonwealth of Pennsylvania. Our tobacco internal revenue stamps decreased our tax about $12 million. Don't you see some hope that we can salvage segments of our economy?

Dr. TERRY. You asked quite a few questions, Mr. Rooney. In relationship to your last question I would hope sincerely as an individual and otherwise that some day we can reach the stage where we could have a safe cigarette. Unfortunately, insofar as I can tell, and my scientific advisers can tell, we do not have it now and we cannot say it is in the immediate offing.

Therefore, in spite of my wishes for a safe cigarette I don't think I can promise anything in that regard. With relationship to your question about inhalation, admittedly different smokers inhale to varying degrees.

It is difficult for me to conceive of any cigarette smoker who does not inhale some. Obviously, others inhale much more. Generally, the more you inhale, the greater is the health risk.

Mr. ROONEY. Thank you. I have no further questions, Mr. Chairman.

Mr. KORNEGAY. As far as gross State cigarette taxes to Pennsylvania, it was $90,972,000 in 1962.

Mr. ROONEY. It dropped $12 million. That is the point.

The CHAIRMAN. Doctor, how did you come to set up this special committee of experts? How did you arrive at the decision to get this in motion?

Dr. TERRY. Mr. Harris, this took place over a period of far more than a year in terms of the interest of many of the large, voluntary

health organizations such as the American Cancer Society, the American Heart Association, the American Public Health Association, the National Tuberculosis Association, and other groups that were interested in this problem and trying to focus attention on it. As a matter of fact, these organizations, as well as many individuals and other organizations, made representations directly to President Kennedy asking that a Presidential commission be set up.

In view of the concern of these groups, as well as many of the Members of Congress, we brought together representatives of these various groups as well as various segments of the Federal Government who had potential interest. We in the Public Health Service made the proposal that such a study be set up.

The CHAIRMAN. When did you first make that proposal?

Dr. TERRY. It was about June 1962.

The CHAIRMAN. First you announced the establishment of the committee June 7, 1962?

Dr. TERRY. Yes, sir. We drew up the proposal, obtained agreement and announced it on June 7, 1962.

The CHAIRMAN. Did President Kennedy ask you to do it?

Dr. TERRY. I think that the Secretary checked it out with the White House.

The CHAIRMAN. Did you indicate in your statement that Dr. Burney, your predecessor, had this matter under discussion and was thinking of taking some action or at least had made some reports?

Dr. TERRY. In 1957 and again in 1959 Dr. Burney had made public reports on the question of cigarette smoking and lung cancer. The 1959 report which was published in one of the November issues of the Journal of American Medical Association clearly indicated the position of the Public Health Service that lung cancer was at least in part caused by cigarette smoking and that the best way to avoid this was not to smoke cigarettes.

The CHAIRMAN. Do you know why it is that the American Cancer Society, the American Heart Association, and these other groups, including the Public Health Service, have always centered their efforts toward cigarette smoking without giving emphasis to tobacco chewing or snuff dipping?

Dr. TERRY. I personally feel, Mr. Harris, that there is adequate evidence to point out very clearly that the health hazard associated with cigarette smoking is much greater than with cigar or pipe smoking. I think this is the reason that the medical and health people have focused their attention on cigarette smoking.

The CHAIRMAN. Everything you have here, your report, and other statements, seems to be directed primarily to cigarette smoking. You don't seem to have any information, other than general indications about what happens in these other uses of tobacco?

Dr. TERRY. I think we do. I think if you read the details of the report, Mr. Chairman, you would see that there is a great deal of information with regard to other types and the health aspects of the other types of tobacco use.

The CHAIRMAN. What is there about the tobacco that goes into the cigarette that appears to be more hazardous than the tobacco that is used in some other way?

Dr. TERRY. I don't think we are in a position to answer that question. I think the only thing we can say is that cigarette smoking has this effect. There are many aspects of cigarette smoking which need further study and further investigation. Some have contended, for instance, that it was the paper in which the cigarette was wrapped that caused the health effects. Others have contended that it was the particular type of tobacco that went into cigarettes.

Others have proposed that it was due to the temperature at which the cigarette burned in contrast to the temperature at which the pipe, cigarette or cigar burned. We do not really know what causes the difference between the health effects of cigarette smoking and that of tobacco used otherwise.

The CHAIRMAN. Does the burning of the cigarette produce carbon monoxide?

Dr. TERRY. In small quantities it does. There are many other substances including what we refer to as hydrocarbons which are also present in cigarette smoke and which in experimental animals produce tumors.

The CHAIRMAN. Let me on behalf of the committee, thank you, Doctor, for your testimony on this question. I think we have a very difficult problem. I am not sure that anybody has any ideas what should be done except the one you suggested here this morning. A lot of people are insisting that certain things be done. The question of preemption is very high in the minds of some people. Suppose localities and States start acting in this field? Have you given any thought to the results?

Dr. TERRY. There are many discussions and actions that are being conducted at the community and the State level, Mr. Chairman. I think there will be a great deal done at these levels, particularly in education and dissemination of information.

The CHAIRMAN. Suppose we develop restrictions here and yonder that are different in different communities, wouldn't that bring about chaos, or would that be a good way to ultimately dispose of this question?

Dr. TERRY. I don't think it is likely that communities, regions, States, are going to develop legislation which would lead to chaos. All of the indications I have seen is that these groups are operating in a very purposeful, organized, sensible manner. I think an example of this is the conference held just last week in the State of Washington. Governor Rosellini called a conference of State, school, related persons interested in the question of smoking and health. Several other States have similar things underway. I have not seen any evidence, Mr. Chairman, of any panic that might lead to the passage of unwise laws or regulations.

The CHAIRMAN. Some of these bills even provide for Federal preemption. I trust you are aware of that.

Dr. TERRY. Yes.

The CHAIRMAN. Is it your feeling that matters of advertising should be attacked by the Federal Trade Commission but matters of labeling should be a matter for your own agency?

Mr. ELLENBOGEN. Let me say first that the Secretary in his interim report, as well as the Surgeon General in his testimony, has said that whatever is proposed or thought by the Department is without

prejudice to whatever existing authority the Commission has under its basic law. The Department has suggested that—because of the type of organizaiton and approach and enforcement technique that our Department has experience within the Food and Drug Administration under the Federal Hazardous Substances Labeling Act, that act would be a more effective vehicle for dealing with the problem insofar as labeling is concerned.

Insofar as advertising is concerned, while it is a health problem that we are dealing with, the report of the Department and the Surgeon General's testimony recognize that the Federal Trade Commission already has under the Wheeler-Lea amendment, which was passed in 1938, relevant specific provisions with respect to false and misleading advertising of food, drugs, and cosmetics, and they suggest that this framework could effectively be used as a base on which to build specific authority in relation to advertising of cigarettes.

The CHAIRMAN. All of those things, I would remind you, are intended to give authority to an agency of Government to say what can't be done.

Mr. ELLENBOGEN. I beg your pardon, I did not hear the question.

The CHAIRMAN. Those provisions of the law give authority to an agency of the Government to say what cannot be done; in other words, nothing can be done which would be misleading advertising.

I do not know of anything in those laws that would permit the agencies to require someone to do something they do not want to do.

Mr. ELLENBOGEN. The Federal Trade Commission has proposed trade regulation rules which take the view that under their basic authority they can require an affirmative warning now. We do not attempt to interpret their act. They will be represented here, I understand, and testify and will be able to explain their position on it.

The CHAIRMAN. This is going to be very interesting because I had always thought section 5 of the Federal Trade Commission Act gives authority to the agency to prohibit business from doing certain things such as unfair practices and so forth.

Mr. ELLENBOGEN. I think, Mr. Chairman, the Chairman of the Commission is scheduled here to testify.

The CHAIRMAN. He will be here tomorrow. But the labeling requirements of the Hazardous Labeling Act have a different approach.

Mr. ELLENBOGEN. That is true. As I say, our interim report and the Surgeon General's testimony take the position that insofar as labeling is concerned, that approach would be more effective than would the approach that might be usable under the other legislation.

The CHAIRMAN. Insofar as food and drug is concerned, that approval would actually give the Department the authority to approve labeling.

Mr. ELLENBOGEN. Are you speaking of food, drugs, and cosmetics?

The CHAIRMAN. Yes.

Mr. ELLENBOGEN. Within certain limits, the Food, Drug, and Cosmetic Act does confer such authority. For example, on new drugs we pass on the safety and efficacy of these drugs under the particular conditions of use specified in the labeling.

The CHAIRMAN. If that label does not carry certain things which you approve then that particular product cannot be put on the market?

Mr. ELLENBOGEN. In those instances that is true.

Mr. HARVEY. Mr. Chairman, if I may speak for a minute, I think we are in danger of confusing here as between the Food, Drug, and Cosmetic Act and the Hazardous Substances Labeling Act.

The suggestion that the Department has made in Dr. Terry's testimony and in the Department's interim report to the chairman has been that the Hazardous Substances Labeling Act, appropriately amended to include tobacco with a specific provision for the labeling of cigarettes, would be an appropriate vehicle because it is an act which requires—it is not an act that says "Thou shalt not," but an act that requires certain specific mandatory labeling to warn consumers on many different types of products of the particular inherent hazards in the use of that type of product.

That is why the Department felt that it should call your attention to the fact that this particular act and the machinery that is set up for it in the Food and Drug Administration would appear to be an entirely suitable vehicle for the very type of labeling for cigarettes that is advocated at least by some, that each package of cigarettes remind the user of the hazards that exist.

The CHAIRMAN. I would like to say there is no confusion whatsoever. I was merely pointing up what the situation is with reference to the authority under the Federal Trade Commission Act and what the authority is under the Hazardous Labeling Act and what the authority is insofar as the Food and Drug Administration is concerned.

Mr. HARVEY. I did not intend to suggest confusion on your part, Mr. Chairman. I only have concern to avoid any misunderstanding of the reference made in the room about the Food, Drug, and Consumer Act.

The CHAIRMAN. I was merely trying to show for the record what the Congress had done in these various areas insofar as providing authority for the agencies to administer the programs. It is going to be our responsibility to try to clear up some of these things. At least, I hope we can.

Again let me thank you, Dr. Terry, and your associates, for your very valuable presentation here this morning in helping us to develop the record.

Dr. TERRY. Thank you, Mr. Chairman. As you indicated earlier, I am and any of us are always readily available to your committee at your call.

The CHAIRMAN. It may be that we will want to have you back after others have testified including, as you indicated earlier, certain proposals that will very likely be made during the course of the hearing.

Dr. TERRY. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will adjourn until 10 o'clock in the mornnig at which time the Chairman of the Federal Trade Commission will be the witness.

(Whereupon, at 12:50 p.m. the committee recessed, to reconvene at 10 a.m., Wednesday, June 24, 1964.)

CIGARETTE LABELING AND ADVERTISING

WEDNESDAY, JUNE 24, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order. Before the Chairman of the Federal Trade Commission presents his testimony we are pleased to welcome our colleague, Mr. Fino, of New York, who is the author of one of the bills before us today. Mr. Fino could not be with us yesterday. We will be glad to have a statement from you.

STATEMENT BY HON. PAUL A. FINO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. FINO. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, at the outset, allow me to express my thanks and appreciation for giving me the opportunity to appear here this morning and to testify in support of my bill, H.R. 9693.

I also wish to compliment this committee and its chairman for its wisdom in holding these hearings on cigarette labeling legislation which has generated widespread public interest and deep concern.

I am certain that a worthwhile purpose will be served by these public hearings because a serious question of public health is involved in which the Congress has a grave responsibility.

Gentlemen, my bill, H.R. 9693, would provide that cigarettes sold in interstate and foreign commerce be packaged and marked to show the tar and nicotine content of the cigarettes in each package and that each package also carry the label, "Warning—Contents May Be Dangerous to Health."

I have been concerned about the health hazard involved in smoking for quite some time. Back in 1955, I introduced by first bill to provide for the labeling of cigarettes to show nicotine content. I sponsored the same measure again in 1957, and then later that year, as evidence of the harmful effects of the so-called cigarette tars began to mount, introduced another bill which would have required that both nicotine and tar content be indicated on the packages. I sponsored similar legislation again in 1962 and 1963. Now I am trying once more, and I hope this year the interest and concern which has been aroused by the Surgeon General's Advisory Committee's report, both among the general public and in Congress, will provide the necessary impetus for the enactment of this legislation.

I am certain that the members of this committee are fully familiar with the findings of the Surgeon General's expert committee on smoking and health. We would all agree that the credentials of these scientists are impeccable, and we know that their report was made only after they had reviewed literally thousands of studies on the relationship between cigarette smoking and specific diseases. With these facts in mind, it is impossible to ignore their report or to argue that that there is not yet sufficient evidence to prove that smoking is harmful to health. Had the evidence really been insufficient the committee itself would have said so. Instead, the members agreed unanimously that there is a direct causal relationship between cigarette smoking and lung cancer in man, and existing data point in the same direction for women. The committee also found that cigarette smoking is the most important of the causes of chronic bronchitis in the United States.

According to the Surgeon General's Advisory Committee, cigarette smoking is considerably more important than occupational or environmental factors such as air pollution in causing both lung cancer and chronic bronchitis. Although the role of cigarette smoking in cardiovascular disease is less clearcut, the experts feel that there is considerable evidence that it is a contributing factor to this major health problem as well. In view of these facts the committee made the following judgment:

> Cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action.

The committee did not state what this remedial action should be and apparently did not feel that it was within its province to do so. It is clearly within our authority however, and it is our responsibility as legislators, to study the situation and to take whatever remedial action is necessary. Each year the death rates for lung cancer, bronchitis, emphysema, and cardiovascular diseases have continued to rise. Last year more than 40,000 people died from lung cancer; 15,000 others died from bronchitis and emphysema, and nearly 600,000 more died from heart disease. Undoubtedly these numbers will continue to grow unless something is done, and done soon.

Now, what can be done about this situation? First of all, I am realistic enough to know that we cannot keep people from smoking anymore than we can prevent them from gambling or drinking. Despite repeated warnings, there has been a steady increase in the per capita consumption of cigarettes in this country in recent years with 1963 setting an alltime record. I think educational campaigns may be helpful in discouraging young people from smoking, but a great many people who smoke will continue to do so, and others no doubt will join them. Accepting this situation as inevitable, the best we can do, it seems to me, is to constantly remind people of the dangers inherent in smoking and provide them with the means of judging which cigarettes are least harmful to their health.

The fact that people are concerned is revealed in the tremendous popularity of the filter-tip brands in recent years. The truth of the matter is, however, (1) the Surgeon General's Advisory Group found no evidence to prove that present filter-tip cigarettes are any less harmful than on-filter brands; and (2) laboratory tests made for Reader's Digest reveal that a number of filter tips actually contain more tar

and nicotine than their corresponding nonfilter twins due to the increased length and the stronger tobacco and flavorings used in order for the smoker to "enjoy the taste" of the cigarette despite the filter.

In view of all the advertising claims and counterclaims made on behalf of the various brands, it is no wonder that the public is confused about their relative merits. It seems to me that this is a very unfortunate situation. I feel pretty confident that if the consumer knew which brands were best for him, he would smoke these brands, but at present he has no way of obtaining this information. I believe the buyer has a right to know what he is getting. I also believe the tobacco companies should be obligated to supply him with the information, and the Government should, in the interest of public health, compel such protective measures.

An additional benefit we could expect from such compulsory labeling would be intensified research efforts by all the competitive tobacco companies to reduce the tar and nicotine content of their brands with the result that cigarette smoking would become less hazardous to health. This is exactly what happened during the "tar derby" in the late 1950's when competition within the industry reduced the tars in cigarette smoke by 60 percent. However, when the Federal Trade Commission clamped down on advertising based on claims of superior or improved filters, the industry modified its advertising approach and simultaneously reduced or abandoned efforts to produce safer cigarettes. Proof of this is seen in two studies by the Foster D. Snell Laboratories in 1961 and 1963 which showed that among all the leading brands there was no reduction in the tar and nicotine content in that 2-year period. I think it is truly regrettable that the Federal Trade Commission's ruling led to this result, and I believe it is high time for the Government to take appropriate action to get the industry moving again toward developing a better, safer product.

In this regard, American Tobacco Co., which has recently begun marketing two new brands—Carlton and Montclair—which are labeled to show the tar and nicotine content of each cigarette, deserves to be congratulated. Gentlemen, I have before me the package of Carlton cigarettes and Montclair and on both of them there are indications as to the tar and nicotine content. I have also attached thereto the type of label which the Roswell Health Institute in Buffalo, N.Y., has suggested. The type which says, "Warning—excessive use is dangerous to health."

This is certainly a step in the right direction. Unfortunately however none of the five other leading cigarette manufacturers has yet agreed to follow suit. From the consumer's standpoint labeling only two brands as to tar and nicotine content probably has limited value. All brands ought to be labeled so that the buyer will have an adequate basis for comparison in choosing his cigarette.

As I mentioned earlier, this is not a new idea, as far as I am concerned. I've introduced and supported cigarette labeling legislation a number of times during the last 10 years. I am firmly convinced consumers ought to have this kind of information, and I'm hopeful that, faced with labeling requirements, the cigarette industry would once again step up its efforts to reduce the hazardous substances in tobacco smoke. In view of the present dangers involved in cigarette smoking and the lack of progress toward developing a safer product,

I think there is a very real and urgent need for labeling legislation. I feel it is imperative that Congress adopt such a measure, and I hope this committee will take favorable action upon my bill.

Thank you.

The CHAIRMAN. Thank you very much. We are very glad to have your statement. We appreciate you coming here to the committee and giving your views.

Mr. FINO. Thank you, Mr. Chairman, and members of the committee.

The CHAIRMAN. Mr. Paul Rand Dixon, Chairman of the Federal Trade Commission. Mr. Dixon, you have some of your associates with you. I think for the record probably you should identify them.

Mr. DIXON. To my right is Assistant to the Chairman, John V. Buffington, and to my left the Assistant General Counsel in charge of legislation, Mr. Fletcher Cohn.

The CHAIRMAN. You may proceed, Mr. Dixon.

STATEMENT OF HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JOHN N. F. WHEELOCK, EXECUTIVE DIRECTOR, FEDERAL TRADE COMMISSION; JOHN V. BUFFINGTON, ASSISTANT TO THE CHAIRMAN; AND FLETCHER COHN, ASSISTANT GENERAL COUNSEL IN CHARGE OF LEGISLATION

Mr. DIXON. Thank you, Mr. Chairman.

On behalf of the Federal Trade Commission I appear here today in response to your request to discuss the legislation pending before the committee relating to cigarettes and other smoking products. Of the 10 bills pending before you, 8 are limited in their coverage to cigarettes—H.R. 3610, H.R. 4168, H.R. 7476, H.R. 9655, H.R. 9657, H.R. 9668, H.R. 9693, H.R. 9808. Two identical bills—H.R. 5973 and H.R. 9512—relate to all smoking products generally; that it, cigarettes, cigars, and pipe tobacco. These bills would either require cautionary or informative labels or advertising of cigarettes or require an expanded research activity and public education in the field of smoking and health.

Two of the bills—H.R. 9655 and H.R. 9693—would vest administrative responsibility for the regulation of cigarette labeling and advertising in the Federal Trade Commission under standards promulgated in cooperation with the Department of Health, Education, and Welfare. Also, enforcement authority would be placed in the Federal Trade Commission by H.R. 9808 over cigarette labeling and advertising and by H.R. 3610 and H.R. 9693—which supersedes H.R. 4168—over cigarette labeling.

H.R. 7476 would simply make it a crime for a manufacturer to ship cigarettes in interstate commerce unless the package contains a specific statutory warning.

Of the 10 bills which are now before your committee, the Commission has submitted its comments as to 7 of them. Because two of the bills are duplicates of other bills, the committee has the views of the Commission as to nine of the bills. The one bill on which the Commission has not been asked to comment, H.R. 9668, provides for an

informational and educational program to apprise the public of the hazards of cigarette smoking and for the establishment of a research program. H.R. 9668 was introduced subsequent to the publication of the report of the Advisory Committee to the Surgeon General of the Public Health Service on smoking and health.

In commenting upon H.R. 3610, H.R. 4168, H.R. 5973, and H.R. 7476, which were introduced before the publication of the report of the Advisory Committee to the Surgeon General, the Commission stated that it wished to defer its recommendations until it had had an opportunity to thoroughly consider and fully evaluate the findings contained in that study.

As to the three bills introduced subsequent to the publication on January 11, 1964, there of the report of the Advisory Committee (H.R. 9655, H.R. 9693, and H.R. 9808) the Commission in its reports to your committee stated that it did not believe it appropriate for the Commission to comment at that time on the specific provisions of the bills because it was currently engaged in a comprehensive rulemaking proceeding to determine whether, and what, remedial action on the part of the Commission in the field of cigarette labeling and advertising was warranted.

The protection of the public from false, misleading, deceptive, or unfair advertising—including labeling—which may endanger human health and safety is a prime responsibility and duty of the Commission.

Under section 5 of the Federal Trade Commission Act, the Commission has the authority and the responsibility to proceed against any actual or potential deception in the sale, or offering for sale, of any product, in commerce, as "commerce" is defined in the Federal Trade Commission Act. Such deception may result either from a direct statement concerning a product or a failure to disclose any material fact relating to such product. Acting under this broad statutory responsibility, the Commission on January 18, 1964, gave notice through the Federal Register of the institution of a proceeding looking toward the promulgation of a trade regulation rule for the prevention of unfair or deceptive acts or practices in the advertising or labeling of cigarettes.

Attached hereto and made a part of my statement is the Commission's press release of January 18, 1964, making this announcement.

Pursuant to this notice, the Commission began a series of hearings on March 16, 1964, before the full Commission. All who wished to appear were given an opportunity to do so. Also anyone who desired to file any form of statement was extended the privilege of doing so. A complete transcript of the hearings, together with all data, letters, statements, etc., which the Commission received now comprises a public record of the proceeding. The record of the proceeding was finally closed on May 15, 1964.

The Commission has completed its consideration of the record in this proceeding and has determined that the public interest requires the promulgation of a trade regulation rule for the prevention of unfair or deceptive advertising or labeling of cigarettes in relation to the health hazards of smoking. This rule and accompanying statement of basis and purpose of the rule presently is in the printing stage and consists of over 150 pages.

The Commission will publish this rule and accompanying statement in the very near future.

The Commission's report would, I believe, be a great assistance to the committee and the Congress in determining what, if any, additional legislation is needed on this subject. It would be my suggestion that this committee withhold final action upon these bills until it has had an opportunity to consider in detail the Commission's action and report.

The CHAIRMAN. Does that conclude your statement?

Mr. DIXON. That concludes my statement, sir.

The CHAIRMAN. The copy of the news release referred to and the notice of rulemaking which you mentioned will be included in the record at this point for the information of the committee.

(The documents referred to follow:)

[News release, Federal Trade Commission, Washington, D.C., Jan. 18, 1964]

FTC ANNOUNCES PROPOSED TRADE REGULATION RULES GOVERNING FUTURE ADVERTISING AND LABELING OF CIGARETTES

The Federal Trade Commission today announced that it has initiated a proceeding for the promulgation of trade regulation rules regarding unfair and deceptive acts or practices in the advertising and labeling of cigarettes. This action may result in requiring the cigarette industry to disclose the dangers to health risked by smokers.

All interested persons, including the consuming public, may file written data, views, or argument concerning the proposed rules and the subject matter of this proceeding with the Chief, Division of Trade Regulation Rules, Bureau of Industry Guidance, Federal Trade Commission, Sixth Street at Pennsylvania Avenue NW., Washington, D.C., 20580, not later than Monday, March 2, 1964. Twenty copies of such written data, views, or argument shall be filed.

A public hearing on the proposed rules and the subject matter of the proceeding will be held before the members of the Commission commencing at 10 a.m., on Monday, on March 16, 1964, in room 532 of the Federal Trade Commission Building, Washington, D.C. At the hearing, interested persons may appear and express their views as to the proposed rules and the subject matter of the proceeding. Any person desiring to present his views at the public hearing must file with the Secretary of the Commission, no later than March 5, 1964, the written text or summary of his oral presentation and the estimated time required for delivery. The Commission may impose reasonable limitations upon the length of time allotted to any person.

Attached is the text of the proposed notice and rules, which were forwarded today for publication in the Federal Register.

FEDERAL TRADE COMMISSION

Notice of Rulemaking Proceeding for the Establishment of Trade Regulation Rules for the Advertising and Labeling of Cigarettes

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended (15 U.S.C., sec. 41 et seq.), and the provisions of subpart F of the Commission's Procedures and Rules of Practice (28 F.R. 7083–84 (July 1963), has initiated a proceeding for the promulgation of trade regulation rules regarding unfair and deceptive acts or practices in the advertising and labeling of cigarettes.

For the purpose of carrying out the provisions of the statutes administered by it, the Commission is empowered to promulgate rules and regulations applicable to unlawful trade practices. Such trade regulation rules express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers. Trade regulation rules do not enlarge those substantive legal prohibitions, but define and particularize them as applied to specific problems and conditions.

Where a trade regulation rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve the issue, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the particular case.

The report of the Advisory Committee to the Surgeon General of the Public Health Service on smoking and health (issued January 11, 1964) has focused attention on the existence of problems within the statutory jurisdiction and responsibility of the Federal Trade Commission to prevent "unfair or deceptive acts or practices" in the labeling and advertising of cigarettes. The group of highly qualified scientists constituting the Committee found, on the basis of prolonged study and evaluation of many lines of converging evidence, that "cigarette smoking is a health hazard of sufficient importance in the United States to warrant appropriate remedial action" (p. 33).

The specific findings of the Advisory Committee include the following:

"Cigarette smoking is associated with a 70 percent increase in the age-specific death rates of males, and to a lesser extent with increased death rates of females. The total number of excess deaths causally related to cigarette smoking in the U.S. population cannot be accurately estimated. In view of the continuing and mounting evidence from many sources, it is the judgment of the Committee that cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate.

"Cigarette smoking is causally related to lung cancer in men; the magnitude of the effect of cigarette smoking far outweighs all other facts. The data for women, though less extensive, point in the same direction.

"The risk of developing lung cancer increases with duration of smoking and the number of cigarettes smoked per day, and is diminished by discontinuing smoking. In comparison with non-smokers, average male smokers of cigarettes have approximately a 9- to 10-fold risk of developing lung cancer and heavy smokers at least a 20-fold risk.

* * * * * * *

"Cigarette smoking is the most important of the causes of chronic bronchitis, and increases the risk of dying from chronic bronchitis and emphysema. (P. 31.)

* * * * * * *

"It is established that male cigarette smokers have a higher death rate from coronary disease than non-smoking males." (P. 38.)

* * * * * * *

"The overwhelming evidence points to the conclusion that smoking—its beginning, habituation, and occasional discontinuation—is to a large extent psychologically and socially determined." (P. 40.)

Protection of the consuming public from false, misleading, deceptive or unfair advertising (including labeling) of products that may endanger human health or safety is a prime duty of the Commission. The Commission has reason to believe that much current cigarette advertising may violate the laws administered by the Commission, in that it may prevent or hinder large numbers of consumers from recognizing and appreciating the nature and extent of the substantial health hazard of cigarette smoking.

Specifically, the Commission is concerned with two ways in which cigarette advertising may be unlawfully misrepresenting or concealing the health hazards of smoking. First, the Commission has reason to believe that many current advertisements falsely state, or give the false impression, that cigarette smoking promotes health or physical well-being or is not a health hazard, or that smoking the advertised brand is less of a health hazard than smoking other brands of cigarettes.

Second, the Commission has reason to believe that much current advertising suggests or portrays cigarette smoking as being pleasurable or desirable, compatible with physical health, fitness or well-being, or indispensable to full personal development and social success, without at the same time reminding the consumer of the serious health hazard of cigarette smoking. Such advertising may create a psychological and social barrier to the consuming public's understanding and appreciation of the gravity of the risks to life and health involved in cigarette smoking.

Massive advertising, depicting and constantly reiterating the pleasures and desirability of cigarette smoking but failing to disclose the risks to health, appears to be a potent force in increasing sales of cigarettes, despite increasing

scientific and governmental recognition of the existence and seriousness of such perils. Although there has been mounting evidence of the grave health hazards of cigarette smoking since at least 1954, the annual consumption of cigarettes per person has steadily and sharply increased, from fewer than 3,400 in 1954 to more than 4,000 in 1963. In the same period the total number of cigarettes sold to the public increased from about 380 billion to about 520 billion. Meanwhile, total advertising expenditures by the industry appear to have doubled in this period, exceeding $200 million in 1963. The Advisory Committee stated that the cigarette-smoking habit "is to a large extent psychologically and socially determined," and it would appear that the massive and increasing cigarette advertising has materially contributed to the sharp and continuous growth in cigarette consumption, in the face of the mounting evidence of the serious health hazard involved in cigarette smoking.

The Federal Trade Commission Act enacted into law basic principles for the protection of consumers against unfair or deceptive advertising. It is established that a seller may not misrepresent, whether affirmatively or by failure of disclosure, the dangers to health or safety involved in using his product. Similarly, a literally true claim regarding the consequences to health or safety of using the product may nevertheless be deceptive because of failure to disclose material facts that limit and qualify the claim. The facts and the public interest may require application of these principles to cigarette advertising and labeling. Thus, if the dangers to health involved in cigarette smoking are so serious that knowledge and appreciation of them would be a material factor in influencing a person's decision whether, or how much, to smoke cigarettes or a particular brand of cigarettes, affirmative disclosure of these dangers in cigarette advertising may be a necessary antidote to advertising which, by design or otherwise, may tend to cloud or obscure public consciousness of the health perils of cigarette smoking.

The problem of cigarette advertising and health appears to be great and increasing. In the period between 1955 and 1962, deaths from lung cancer in the United States increased from 27,000 to 41,000; deaths from heart disease rose from 273,000 in 1940 to 578,000 in 1962; and between 1945 and 1962 deaths from chronic bronchitis and emphysema increased from 2,300 to 15,000. The Report of the Surgeon General's Advisory Committee having found that cigarette smoking is a substantial cause of the increasing death rate, the Commission has determined that the public interest requires initiation of the present Trade Regulation Rule proceeding, for immediate corrective action, on a broad, equitable and industry-wide basis, to the extent of the Commission's statutory jurisdiction and responsibilities.

Included herewith are a set of proposed Trade Regulation Rules for Advertising and Labeling of Cigarettes. These Rules, and the present views of the Commission on the problem of cigarette advertising and health, are tentative and not final. On the basis of the matters presented in this Trade Regulation Rule-making proceeding, and on other developments, the Commission may decide to modify, alter, withdraw, or add to the proposed Rules. The Trade Regulation Rule-making proceeding shall not be limited to consideration of the specific proposed Rules, but shall be an inquiry into the broad subject of protection of the public in the field of cigarette advertising (including labeling) and health.

In particular, the Commission invites consideration of the question whether, in the exercise of its statutory jurisdiction and responsibilities, the Commission should promulgate a Code of Fair Cigarette Advertising (under Subparts E or F of the Commission's Procedures and Rules of Practice) intended especially to protect the youth of the nation against unfair or deceptive acts or practices in cigarette advertising. The extensive advertising on television for cigarettes, on programs widely watched by young people, continuously projecting an image of cigarette smoking as a socially desirable and accepted activity, consistent with good health and physical well-being, may have a great impact on impressionable young minds, and may block appreciation of the serious health hazards of smoking cigarettes. There is evidence that "Men who began smoking before age 20 have a substantially higher death rate than those who began after age 25." (Advisory Committee's Report, p. 29.) This suggests the importance of protecting young people, lacking mature judgment, from being unduly influenced by cigarette advertising to take up smoking, a habit difficult to break. (Id., p. 34.)

All interested persons, including the consuming public, are hereby notified that they may file written data, views or argument concerning the proposed Rules and the subject-matter of this proceeding with the Chief, Division of Trade Regula-

tion Rules, Bureau of Industry Guidance, Federal Trade Commission, Sixth Street at Pennsylvania Avenue NW., Washington, D.C., 20580, not later than March 2, 1964. Twenty (20) copies of such written data, views or argument shall be filed.

A public hearing on the proposed Rules and the subject-matter of the proceeding will be held before the members of the Commission commencing at 10:00 a.m. on Monday, March 16, 1964, in Room 532 of the Federal Trade Commission Building, Washington, D.C. At the hearing, interested persons may appear and express their views as to the proposed Rules and the subject-matter of the proceeding. Any person desiring to present his views at the public hearing shall file with the Secretary of the Commission, no later than March 5, 1964, the written text or summary of his oral presentation and the estimated time required for delivery. The Commission may impose reasonable limitations upon the length of time allotted to any person; if by reason of the limitations imposed the person cannot complete the presentation of his views he may, within twenty-four (24) hours, file a written statement covering those relevant matters which he did not orally present. A transcript of the hearing shall be made and shall constitute a part of the record of the proceeding.

These data, views or argument presented orally or in writing will be available for examination by interested parties at the Federal Trade Commission, Washington, D.C., and will be considered by the Commission in the establishment of Trade Regulation Rules.

All persons, firms, corporations, or others engaged in the sale or distribution of cigarettes in commerce, as "commerce" is defined in the Federal Trade Commission Act, would be subject to the requirements of any Trade Regulation Rules promulgated in the course of this proceeding.

By the Commission.

JOSEPH W. SHEA,
Secretary.

The CHAIRMAN. I notice that there is a copy of a proposed trade regulation rules for the advertising and labeling of the cigarettes. Is that part of the notice of the rulemaking?

Mr. DIXON. That was part of the notice.

The CHAIRMAN. It will be included in the record, too.

(The document referred to follows:)

PROPOSED TRADE REGULATION RULES FOR THE ADVERTISING AND LABELING OF CIGARETTES

These rules state the substantive requirements of the Federal Trade Commission Act with respect to the sale, offering for sale and distribution, in commerce, of cigarettes.

Rule 1. Either one of the following statements shall appear, clearly and prominently, in every cigarette advertisment and on every pack, box, carton, and other container in which cigarettes are sold to the public:

(a) "Caution—Cigarette Smoking Is a Health Hazard: The Surgeon General's Advisory Committee on Smoking and Health has found that 'cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate' "; or

(b) "Caution: Cigarette smoking is dangerous to health. It may cause death from cancer and other diseases."

COMMENTS ON RULE 1

The requirement of disclosure imposed by rule 1 on cigarette labeling and advertising is based on the principle, established in the interpretation and application of the Federal Trade Commission Act, that it is an unfair and deceptive trade practice to fail to disclose material facts concerning a product which may influence many consumers in their decision whether to purchase the product, particularly where use of the product might endanger health or safety. The ultimate finding made by the Surgeon General's Advisory Committee on Smoking and Health, which is embodied in the caution specified in rule 1(a), is such a fact.

An alternative, short-form cautionary statement is provided in rule 1(b) for those advertisers who prefer to use it in, for example, a short "spot" television commercial.

The Commission believes that a uniform form of cautionary statement is necessary to protect the consuming public. If each advertiser were free to formulate a different cautionary statement, the result would be that many consumers would be confused and might fail to appreciate its significance.

Rule 2. No cigarette advertisement* shall state or imply, by words, pictures, symbols, devices or demonstrations, or any combination thereof, that smoking the advertised cigarettes—

(a) promotes good health of physical well-being.

(b) is not a hazard to health, or

(c) is less of a hazard to health than somking other brands, except that a specific and factual claim respecting the health consequences of smoking the advertised cigarettes may be advertised if—

(1) the advertiser, before making the claim, has substantial and reliable evidence to prove the accuracy and significance of the claim, and

(2) all facts material to the health consequences of smoking the advertised cigarettes are clearly, prominently, and intelligibly disclosed in close conjunction with the claim.

COMMENTS ON RULE 2

Rule 2 is intended to prevent the confusion and misunderstanding on the part of the public that would be created if cigarette advertisers were free to contradict, in their advertising, the cautionary statement required by rule 1. In addition, the rule embodies the established principle that deception unlawful under the Federal Trade Commission Act may be the result of half-truths, misleading suggestions or innuendo, as well as explicit false statements or the concealment of material facts.

However, claims concerning the health or safety of particular cigarette brands, where they are truthful and substantiated, are not forbidden. Indeed, it is the Federal Trade Commission's policy to encourage the development of less hazardous cigarettes. Rule 2 accordingly permits the making of substantiated factual claims respecting the health consequences of cigarette smoking, but only under certain conditions which are necessary to protect the consumer from being misled. First, the claim must be accompanied by such explanatory or qualifying language as is necessary to make it fully clear to, and readily understandable by, the consuming public. Second, the advertiser is required, before he advertises such a claim, to have substantiating evidence of its truthfulness and significance to health. To make a claim of the kind embraced by this rule, without such substantiation, demonstrates reckless disregard for human health and safety, and is clearly an unfair and deceptive practice.

Examples

(1) An advertisement states, "Buy Brand X, the Cigarette That Gives You Extra Protection." Such an advertisement would be unlawful even if the caution requirement of rule 1 had been fully complied with.

(2) An advertisement states, "Brand Y Contains the New Improved Kryptonite Filter." Such an advertisement would be unlawful even if the caution requirement of rule 1 had been fully complied with, since the advertisement would give many people the impression that brand Y's filter makes smoking brand Y safe or comparatively safe.

(3) An advertisement states, "Brand Z Filters Out All of the Argon From Cigarette Smoke." If the advertiser, before publishing this advertisement, has substantiated the accuracy of the claim that his filter eliminates all of the argon from cigarette smoke, he would be permitted to advertise it. If, however, it is not scientifically established that the elimination of argon significantly lessens the health hazards of cigarette smoking, the advertiser would be required so to state in close conjunction with his claim.

Rule 3. No cigarette advertisement shall contain any statement as to the quantity of any cigarette smoke ingredients (e.g., tars and nicotine) which has not been verified in accordance with a uniform and reliable testing procedure approved by the Federal Trade Commission.

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*For purposes of rules 2 and 3, "advertisement" includes labeling.

COMMENTS ON RULE 3

This rule concerns a specific aspect of the problem dealt with in rule 2. A quantitative disclosure of cigarette smoke ingredients is a claim concerning the health consequences of smoking the advertised brand. It is essential, therefore, that such disclosure be meaningful to the consuming public, and not a source of confusion. Confusion can be obviated, and the ability of consumers to make an intelligent choice among competing brands protected, only if the measurement of cigarette smoke ingredients accords with a uniform, fully reliable, and approved testing procedure. (The Commission is considering approval under this rule of the so-called Cambridge Filter Method presented at the 77th Annual Meeting of the Association of Official Agricultural Chemists, October 16, 1963, at Washington, D.C.

Any advertising claim as to the quantity of any cigarette smoke ingredients must conform with rule 2 as well as with this rule.

Example

It is established under the testing procedure provided for in this rule that the smoke of brand X cigarettes contains 2 milligrams of tars. Brand X advertisements may therefore lawfully state that the smoke of brand X cigarettes contains 2 milligrams of tars. However, if it is not scientifically established that a reduction of the tars content to 2 milligrams significantly lessens the health hazards of cigarette smoking, that fact, and all other material facts bearing on the health consequences of smoking brand X, must also be disclosed in the advertisements.

The CHAIRMAN. Mr. Roberts, do you have any questions?

Mr. ROBERTS. Mr. Chairman, I would like to take this opportunity to compliment the chairman on his statement and I will be very brief in my questioning. Does the chairman see this problem as one or as several problems?

Mr. DIXON. Frankly, sir, I think it is several problems but from the standpoint of the Federal Trade Commission the problem that was presented to us was to carry out our statutory responsibility after the Advisory Committee to the Surgeon General of the Public Health Service rendered its report to him. Obviously there may very well be other facets to the program. I have stayed abreast of your hearings and followed the statements of the Surgeon General, and I am fully aware of his desire to mount some kind of an educational program.

But the problem that we have presented to us is the statutory responsibility of enforcing section 5 of the Federal Trade Commission Act, which commands us to proceed against unfair methods of competition and unfair or deceptive acts or practices.

This was a problem presented to us and we announced the rulemaking proceeding, and as I have recited, we have held our proceeding and have rendered a rule.

Mr. ROBERTS. Does the chairman feel that there is the possibility of a jurisdictional conflict between HEW and the Federal Trade Commission concerning this problem?

Mr. DIXON. I don't see why there should be a jurisdictional conflict, sir. The law is very clear as to the Federal Trade Commission's responsibility. We have exercised our responsibility. I am fully aware of the fact that Congress has the power to vest this type of responsibility wherever they see fit.

Today it is clear under many, many court decisions that the responsibility is clearly at the Federal Trade Commission. It can be placed somewhere else by the Congress. It can be duplicated.

Mr. ROBERTS. What I had in mind was just what you referred to, the statement by the Surgeon General yesterday that in other fields

involving irritants and toxic agents, detergents, and other household hazardous substances, HEW has long done the work of labeling.

That was his statement yesterday, that they would need some amendments for the framework or the vehicle for labeling, not controlling the advertising, but labeling the cigarette package itself. I wonder what the chairman's comment might be on that.

Mr. DIXON. I read Surgeon General Terry's statement and I understand and believe that perhaps if HEW is to take any action in this field perhaps it will be necessary for the Congress to pass an act to give them this power.

I point out to you that today under court authority a cigarette is a product. It is like many other products that the Federal Trade Commission has proceeded against, although this product is intended to be inhaled into the human body. There are many other products that we have proceeded against that have dangers and we have required affirmative warnings.

When you get to the establishment of danger, once that point is passed in any proceeding, the only question left is what kind of remedy is needed? How far must you go? What is in the public interest? Should you go only to the label or should you go to both the label and advertising?

As I followed the Surgeon General's comments here to you, he was talking historically in the pesticides field and in the food and drug field, dealing with foods, drugs, and cosmetics, that they have proceeded in the labeling field there.

The Congress in 1938 amended the Federal Trade Commission Act by adding to it sections 12 through 17, dealing specifically with food, drugs, devices, and cosmetics. At the same time you strengthened the Food and Drug Administration Act. In those specific problems, the Federal Trade Commission was actually given a stronger type of jurisdictional basis—a clearer type of jurisdictional basis. It was given the power to seek temporary injunctions when there was fear of imminent harm or danger, but limited to the field of advertising.

With respect to labeling, however, at the same time the Congress amended section 5 of the Federal Trade Commission Act, the basic section of the Federal Trade Commission Act. Up to that time from 1914 to 1938, the Federal Trade Commission Act read:

> Unfair methods of competition in commerce are hereby declared unlawful.

Note those words.

As I read the history and the things that led to the establishment of the Federal Trade Commission, the Congress did not say: "Unfair competition is unlawful." It said "unfair methods of competition." Congress did not attempt, although they debated it, to list all of the things that could be imagined or believed or thought of at that time as unfair methods of competition.

Following the historical pattern of legislation in this country Congress passed the general type of legislation—"unfair methods of competition are hereby declared unlawful." It created a Federal Trade Commission. Part of that came out of the breakdown of the Sherman Act enforcement, because it had been on the books since 1890.

This arose from a desire to try to move into an area and outlaw and circumscribe practices or methods of competition that would destroy competition, we will say, to eliminate them. In the beginning, a

prophylactic type of action, to act at the incipiency of the practices, before they ended up like the great trusts, with which the country was then facing.

The Commission even between 1914 and 1938 was beginning to be faced with problems of advertising and recommendations. But in order to sustain a case the alleged illegal act or practice had to result in an unfair method of competition to a competitor—not to the public, not to the consumer—but to a competitor.

In 1938 there was added the Federal Trade Commission's responsibility to the consumer. To these words "unfair methods of competition" were added the words "unfair or deceptive acts or practices in commerce."

This country for the first time declared that it was a public policy of the United States to protect the consumer as well as competition. Here was the clear beginning.

Since that time in many, many, many cases—and in this report that we are rendering, you will see a long detailed discussion of these cases—case after case after case this Commission has brought to protect the consumer as well as competition from misstatements, from half truths, from the failure to disclose things that should be disclosed.

One outstanding type of example that I can think of occurred in the cigarette field itself, sir. In the case of P. Lorillard Co., and the citation I will give you is a circuit court citation *P. Lorillard* v. *Federal Trade Commission* (186 Fed. 2d 52, Fourth Circuit, 1950). Here the Federal Trade Commission was proceeding against an advertisement of the respondent who had advertised that a Reader's Digest survey had found its cigarettes to be lowest in tar and nicotine content. This was a true statement of the findings of that survey, but without additional disclosure the statement had misleading implications.

The advertisement implied that respondent's cigarettes were less harmful than competing brands having higher tar and nicotine content. But the survey had concluded that no cigarettes, including respondent's, had a sufficiently low tar or nicotine content to be significantly less harmful than any other cigarette.

The respondent had failed to disclose this qualifying fact and therefore failed to correct the false impression created by its literally true representation. This was deceptive, a half truth and clearly unlawful.

The court said there:

> To tell less than the whole truth is a well-known method of deception.

I just picked this case out at random to you, but here it is right in point. Here was an example of telling the truth, but of not telling the whole truth, it was deceptive. We required that the whole truth be told. In that case we were upheld by the appellate court.

The CHAIRMAN. Would the gentleman yield at that point?

Mr. ROBERTS. Yes.

The CHAIRMAN. There is a point, Mr. Chairman, that I wanted to raise. I ask my colleague to permit me to do it at this time because I will have to be away for a little while in a few minutes.

Mr. ROBERTS. Surely.

The CHAIRMAN. I have been quite interested in your very accurate description of the Federal Trade Commission Act. You certainly are

well informed, as you should be, as the Chairman of the Federal Trade Commission. But is it not also true that the act itself gives the Commission—only gives the Commission—authority to prevent such deceptive practices?

Mr. DIXON. I am afraid it is not that limited, Mr. Chairman.

The CHAIRMAN. Read the section where your authority is. I can see that there is going to be a lot of litigation coming out of this issue and good lawyers are going to tackle it from bottom to top. The committee has a tremendous responsibility. I know you have a tremendous responsibility, and I know you have capable and outstanding people on your staff that study this, but I want to see if we can't get a clearer, concise discussion of this.

You have explained section 5, which is correct. You also mentioned the additional authority under the Wheeler-Lea Act. That was passed in 1938, adding sections 12 through 17, I believe you said awhile ago. Section 5 provides the authority—the basic broad authority—but section 5.6 empowers the Commission to do certain things.

I see the word "prevent."

Mr. DIXON. That is correct, sir.

The CHAIRMAN. The way I read it, if I understand what the word "prevent" means, it means that this is what the Commission has power to do. In the Wheeler-Lea Act, section 12, where the additional power and authority of your Commission is given, it has to do with the dissemination or causing the dissemination of any false advertising. Am I wrong about that?

Mr. DIXON. No, sir. The only point that I would try to clarify is this: It is true that section 5.6 says that the Commission is hereby empowered and directed to prevent and so on, from using unfair methods of competition in commerce and unfair and deceptive acts and practices in commerce. But the court has very clearly sustained the responsibility of the Commission that in this prevention of deception you may have to require a disclosure. That is a type of prevention in and of itself, sir. This is very firmly established in the law. Even the tobacco industry appearing before us has not raised this point.

I think they would concede this point, sir. I do not think there is any question of that fact.

The CHAIRMAN. I do not know anything about the tobacco industry and I am not acquainted with them.

Mr. DIXON. I understand. But they had a very fine lawyer before us, who is very erudite in this subject. I could recite the cases that are in this report that we are having printed here, sir. They are long and lengthy and very detailed. But the court has never hesitated in sustaining the responsibility of this agency in carrying out that section of the law that you have referred to, section 5(6); that is, (5)(a)(6), I think.

The CHAIRMAN. Do you contend, Mr. Chairman, that the law has been construed by the courts and gives the Commission the authority to direct businesses engaged in commerce who do certain things?

Mr. DIXON. Only upon an adequate finding and a predicate. It must be illustrated by the predicate and the finding and the rationale so that the court would have something to review to see the necessity and the need for such prevention, we might say, or the extension of the word "prevention" over into a requirement, to avoid deception.

In other words, I gave you the example of the *P. Lorillard* case. A statement was made that was truthful. It was a truthful statement. But without the requirement that they tell something else it was deceptive, and we required that and the court affirmed us.

The CHAIRMAN. It is very interesting to me. The Commission has beyond question the authority to prevent a business from engaging in certain acts and practices.

Mr. DIXON. From deceptions, sir.

The CHAIRMAN. I do not think there is any question but that the Commission has the authority, or can issue standards or guide rules for a business, where there is a problem. The question that I would like to have developed, and which we are developing here more thoroughly, is to what extent the Commission can go in directing a business to engage in certain practices that it might not want to engage in? I think there is probably a very, very important issue involved at that point, which, it seems to me, might very well require some legislative clarification.

Mr. DIXON. Mr. Chairman, may I read you these two or three paragraphs in these cases?

"Even if no affirmative representation is made, nondisclosure may constitute actionable deception." See the following cases: *Segal* v. *F.T.C.*, 142 F. 2d 255 (2d Cir. 1944); *L. Heller & Son, Inc.* v. *F.T.C.*, 191 F. 2d 954 (7th Cir. 1951); *American Tack Co. Inc.* v. *F.T.C.*, 211 F. 2d 239 (2d Cir. 1954) (per curiam); *Schachnow* v. *F.T.C.*, 1940–43 *Commerce Clearinghouse Trade* cases 56118 (3d Cir. 1941); *Rabhor Co.* v. *F.T.C.* 1940–43 *Commerce Clearinghouse Trade* cases 56220 (2d Cir. 1942 (per curiam); *Mary Muffet, Inc.* v. *F.T.C.*, 194 F. 2d 504 (2d Cir. 1952), and so on.

I could read a lot more under that point but I come back to another point. The Commission has, for example, brought a number of proceedings against sellers who failed to disclose the country of origin of their products. Suppose that the consumer of a particular product bought prefers the domestic product and believes in the absence of an affirmative statement to the contrary that the product is domestic? In such a case the seller of the foreign substitute who fails to disclose its foreign origin has deceived the consumer. I could cite you these cases.

The CHAIRMAN. I do not know why we have bills around here for relating to labeling of movies and the McDonald bill here a few days ago, relating to woven labels and others, where they are requesting legislation in that field. But that is off the subject. We have enough to do with this one.

Mr. DIXON. That was our comment on that bill, sir. I could cite cases under that, quite a few of them.

The CHAIRMAN. Do those have to do with labeling or advertising?

Mr. DIXON. Most of them or a lot of them have to do with labeling. But this is the question of remedy. You understand we require this both for labeling and advertising. This is the question of remedy once it has been determined and found that there is deception. Once that is found, the Commission then would turn to the responsibility of what would be in the public interest in determining what type of remedy to render in the form of an order.

The CHAIRMAN. In order that I might not impose on Mr. Roberts' time any further, then your decision—and I am not getting into your

decisional process now because you have already made the statement about your Commission's decision and it is in print—then your responsibility is coming to a decision as to whether or not a certain label on a cigarette package, fails to disclose certain things.

Mr. DIXON. That is correct, whether on the package or in advertising, whether there has been a failure to warn or alert the public as to the danger of smoking cigarettes.

The CHAIRMAN. That, in your opinion, is the responsibility of your Commission, to decide whether or not that is deception.

Mr. DIXON. That is our responsibility, gentlemen. You assigned it to us.

The CHAIRMAN. Thank you, Mr. Roberts.

Mr. ROBERTS. Mr. Chairman, would you have to wait to examine the label of each particular brand, or could you by rulemaking lay down certain criteria that you think would meet with approval as far as the protection of the public health is concerned?

Mr. DIXON. Mr. Roberts, may I read at this time a little statement I made at the beginning of our rulemaking hearings that I referred to in my statement?

Mr. ROBERTS. Certainly.

Mr. DIXON. It has some bearing on this point. I said this as we opened those hearings:

> A trade regulations rulemaking proceeding is not adjudicative in character. It is not a proceeding to determine whether or not particular persons or companies have violated the laws administered by the Commission. It is prospective, not retrospective in its application. Its purpose is to determine for the future whether certain business practices, if followed, by the members of an industry would be unlawful. Trade regulation rules are not legislative in the sense of adding new substantive rights or obligations. Trade regulation rules do not broaden or expand the prohibitions contained in the statutes administered by the Commission but rather define their application to specific practices or a specific industry within the jurisdiction of the Commission. Before such a rule is promulgated by the Commission all interested persons are given full opportunity to present data, views, and arguments relevant to whether the rule should be adopted. If after the Commission has promulgated a rule any person or company continues to engage in conduct forbidden by the rule, and the Commission issues a complaint alleging that such conduct is in violation of a statute enforced by the Commission; the Commission may, in such an adjudicative proceeding rely on the rule to the extent that it is fair and proper to do so. In a subsequent adjudicative proceeding where a trade regulation rule is relied upon, the respondent may challenge the legality and propriety of relying upon the rule in the particular case.

We turned to this proceeding a year and a half or so ago for the purpose of trying to proceed on an equitable and fair basis. No one would challenge, in my opinion, the right of the Federal Trade Commission to issue a complaint against any manufacturer of cigarettes who is manufacturing, selling, and advertising cigarettes as they have been in the past and the present. But if we did this, we would proceed under the old accepted methods of adjudication.

We have turned to the rulemaking procedure here to try to establish clear-cut lines upon which to base the authority, and we turned very definitely to that blue ribbon authority of the Surgeon General's Advisory Committee.

I do not believe anyone in the United States could have picked a better committee. The tobacco industry itself was given the veto power to take any man off that Committee that they did not like. That

Committee said, as I read the report, that Committee examined 7,000 to 8,000 documents before they rendered their decision. They rendered the decision, and you are familiar with it.

Now we are a regulatory arm of the Congress created to eliminate, among other things, unfair or deceptive practices. Hereby, a past and a present perusal of the advertising and the labeling practices of cigarettes showed there had been no warning regarding it. We gave notice that we proposed to undertake our job in the beginning by the holding of a hearing looking toward the establishment of such a rule, if the record sustained it. We have held it, as I have recited. We have made our decision, and we have established such a rule.

Mr. ROBERTS (presiding). Assume that the Commission issues a complaint against "XYZ" Cigarette Co., and you go into this procedure and through the various phases of it, through a possible appeal from it, and affirmation or overturning by the Supreme Court. If it goes that far, and you finally win in that particular case, suppose another case comes in with a label, would not each case stand on its own particular set of facts?

Mr. DIXON. Each case must. This rule at this stage is advisory. This tells the whole world and the industry what the Federal Trade Commission thinks about this practice. No cigarette company has to pay any attention to it if they do not want to.

At this stage they can take our rule proceeding the day that it is served upon them and go to the nearest court they can find and get it reviewed. I am satisfied that will happen.

Mr. BROTZMAN. Would the gentleman yield for one question?

Mr. ROBERTS. I yield to the gentleman from Colorado.

Mr. BROTZMAN. At this point, Mr. Chairman, I am thinking about one problem. This will have blanket application, your trade regulation, as I understand your statement. I am thinking now in the area of preemption. By that I mean I understand there is some activity at various local governmental levels to deal with this particular problem. It is my understanding from your statement here today, that you are taking your authority, and also you say you have a responsibility from section 5 of the Federal Trade Commission Act.

My precise question is this: With that legal authority, will your regulation have the effect of preemption as it relates to local governmental activity?

Do you understand my question?

Mr. DIXON. I think I do, sir. Let us be hopeful that what flows from what we have done and what might flow from what may be done in the future through the Health, Education, and Welfare Department, that this may be enough.

If upon review it is found by the court that this is legally sound by procedure and by law and by practice, that it is correct—if that day comes and the decision must come and compliance must take place, let us hope that will be enough. But I do not read complete preemption by the Federal Government from any such action. I would be very doubtful if you could ever reach the stage of denying to a State or locality of doing what they would think would be necessary in the interest of the health of their particular citizenry.

For instance, someone might have the thought in a given city that something should be done about selling cigarettes through a vending

machine. I do not know how you can do anything about that down here.

Mr. BROTZMAN. Just to pursue that for one moment, and certainly we probably do not have to debate any legal philosophy, I think there may be certain local police powers under the safety clause to permit local action.

Mr. DIXON. Yes, that is what I was trying to say.

Mr. BROTZMAN. I think you would agree if the Federal Congress does have constitutional authority to act and it does speak clearly on a particular point, that this preempts State action.

Is that not correct?

Mr. DIXON. In my opinion you would have to start over with a clear piece of legislation and make a very clear pronouncement of preemption as an intent and then it would be as you say.

Mr. BROTZMAN. Then the second part, I notice in your answer you were "hopeful." I think your answer really in response to my question was that you really do not know what the effect of your trade regulation would be in regards to this preemption question.

Mr. DIXON. In the ultimate. But I would think that if what we have done, for instance, is voluntarily complied with by the industry, truth will be told. We are a great people for truth. I believe in truth. Congress has required truth through section 5 of the Federal Trade Commission. This is a pronouncement of the Congress of the United States.

Mr. BROTZMAN. This is the last part. I really was asking you a legal question, Mr. Chairman. I have no preconceived ideas on this, but I think it is a point for the committee to consider. I wonder if you or your staff has a legal opinion on this as distinguished from what we might hope would occur. I am wondering if there is any authority as to the effect of a Federal Trade regulation on the preemption problem.

Mr. DIXON. There is no such authority within the Federal Trade Commission Act, sir.

Mr. BROTZMAN. I will yield my time back.

Thank you, Mr. Chairman.

Mr. KORNEGAY Would the chairman yield for one question?

Mr. ROBERTS. I will be glad to.

Mr. KORNEGAY. Mr. Chairman, has not the Court already stated in *Head* v. *NM Board of Commerce* that the Federal Trade Commission rulings are very rarely accorded preemptive effect, speaking through Justice Brennan?

Mr. DIXON. That is possibly so because the Federal Trade Commission rulings and jurisdiction apply to one thing. Congress said "in commerce." It must be in commerce. There are thousands of things that happen locally or intrastate that the Federal Trade Commission cannot reach. Various States have little Federal Trade Commission Acts, and various States have active attorneys general and many of them are becoming more active and duplicating some of the responsibilities of the Federal Government in interstate and beginning to apply them to intrastate actions.

Mr. KORNEGAY. I take it you feel that your action or any action taken by the Commission would not preempt State and local governments in moving in the same field.

Mr. DIXON. This is absolutely correct, sir, because we are in interstate commerce.

Mr. KORNEGAY. That is all.

Mr. ROBERTS. The gentleman from Ohio.

Mr. SCHENCK. Thank you, Mr. Chairman.

Mr. Dixon, I have had many colloquies on the subject. I am wondering, Mr. Chairman, if the Federal Trade Commission has the feeling that the entire question of air pollution is involved in this?

Mr. DIXON. We made no such study nor do I know of anyone else that has made a complete enough study to prompt us to exercise any responsibility.

Mr. SCHENCK. Mr. Chairman, there have been a number of studies made on harmful effects of automobile exhaust gases by the U.S. Public Health Service on human health and extensive report have been printed. That being the case, is it not the responsibility of the Federal Trade Commission to establish some rules and regulations as to what additives are harmful in gasoline and also what kind of equipment must be put on automobiles?

Mr. DIXON. That may be related in some way, sir, but I do not think it is related as is this cigarette problem which is tied in so definitely with the advertising and merchandising and sale of cigarettes.

I point out to you, this, that many studies have been made by various nationalities and by various groups within our own country with respect to the dangers, if any, of smoking cigarettes. It was because of all of these studies, as I have understood it, because soon after I came to the Federal Trade Commission——

Mr. SCHENCK. When was that?

Mr. DIXON. March 1961. I talked this over with my other Commissioners and we were beginning to get many, many complaints, as you can imagine, with respect to this subject. But we are factfinders. We are not doctors, we are not scientists. So looking to the chief responsible officer in the United States of America for the health of the people we, among others—I notice in this report—wrote a letter over there and asked that some attention be given to finally making some kind of determination on this problem. Among many things was the letter that we wrote over to the Surgeon General. It is recited in his report here.

Then this committee was put together to sift through all of these reports. The reason I would call this a blue ribbon committee, I do not know of a stronger jury, if you want to call it a jury, that could have been put together than this panel. They were unanimous in this report. In a sense, when they came back they were the experts that anyone would have to rely upon if they thought that something was wrong. I do not know of anything that has gone that far on air pollution. I am aware, sir, of various studies and reports.

Mr. SCHENCK. I call the attention of the Chairman that the Public Health Service under the Surgeon General of the U.S. Public Health Service made the same study in connection with automotive exhaust gases. I would also suggest whether or not a person desires to smoke cigarettes, cigars, a pipe or chew tobacco or drink whiskey is entirely a matter of personal determination.

Mr. DIXON. I agree with you a hundred percent, sir.

Mr. SCHENCK. And therefore does this voluntarily according to his own views. He does not, however, have an opportunity to avoid breathing whatever air surrounds him. And therefore it seems to me that the Federal Trade Commission should take wide authority, if it has such authority, and views and consider the entire question of air pollution. It ought to insist upon manufacturers of fuels to list the additives that are in the fuel. They ought to insist upon automobile manufacturers developing devices which would take out harmful contents in exhaust gases and should so advertise that their automobiles will perform without harm to the public.

Mr. DIXON. I think this problem will soon be before Congress. I do not know whether we will share any responsibility in the solution or not, sir. But if someone were to be advertising coal dust, for instance, and they had the best football player in the United States breathing coal dust and saying, "This is the reason I am a good football player," we might have a cause of action.

Mr. SCHENCK. Such a comment is not relevant, Mr. Dixon, but there have been such advertisements?

Mr. DIXON. There have been such advertisements.

Mr. SCHENCK. That the smoker who breathes coal dust is the best player because of his breathing a certain brand of coal dust.

Mr. DIXON. I do not think there can be much doubt about the logical conclusion if you take Crazy Legs Hirsch and put him at the top of the coliseum in Los Angeles and saying, "I have been smoking cigarettes for 15 years," and my son and your sons might see that is one of the good ways to become a good football player, sir.

Mr. SCHENCK. That does not sound like any kind of a logical reply to me at all and it is a reply with which I do not agree but if it appears to be logical or reasonable to you, you must assume responsibility for it.

Mr. ROBERTS. The gentleman from Maryland.

Mr. FRIEDEL. Mr. Chairman, there is only one question I wanted to ask and that is the question of overlapping of jurisdiction between HEW and the Federal Trade Commission. Mr. Brotzman brought that question up so I have no question other than to compliment you for your very fine, short, and concise statement.

Mr. DIXON. Thank you, sir.

Mr. ROBERTS. The gentleman from California.

Mr. YOUNGER. Thank you, Mr. Chairman.

I notice in your report, Mr. Chairman, on page 3, you say "any product in commerce." What do you mean by that?

Mr. DIXON. Under section 5 of the Federal Trade Commission Act, the Commission has the authority and responsibility to proceed against any actual or potential deception in the sale, offering for sale, of any product in commerce, as commerce is defined in the Federal Trade Commission Act.

I mean that as it has been interpreted by the courts over the years that very clearly this must be in the stream of interstate commerce.

Mr. YOUNGER. Why do you not say interstate?

Mr. DIXON. Because the law says in commerce and it means interstate. I will say interstate, if you want me to, sir. That is what it means to us. It is a little narrower, sir, than the Sherman Act which says anything you do which may affect commerce. Ours is in commerce.

In other words, a cigarette package must be sold in commerce. Made here, shipped here for sale. The advertised product crosses the State line.

Mr. YOUNGER. Do you consider that if the tobacco moves in interstate commerce then the cigarette, even though it is manufactured and sold in the same State, is subject to your jurisdiction?

Mr. DIXON. I wouldn't torture the act that bad on this one, sir. I think that here you have a finished package that we are talking about. We are not talking about all the ingredients including the blue and the paper and the charcoal and the various things that go into the finished cigarette. Those individual items are in commerce as such because they move from various places.

Mr. YOUNGER. Do you consider that you have jurisdiction over the labeling and advertising of drugs?

Mr. DIXON. The advertising of drugs, we do, sir. We have overlapping jurisdiction with the Food and Drug Administration on drugs, except with respect to one. This last year, or the 87th Congress, passed a law with respect to prescription drugs. They made it clear in the history and in the passage of the act that they wanted the Food and Drug Administration to exclusively administer that. This was with reference to the advertising of such drugs.

Now on all other drug products, food, drugs, devices, or cosmetics within the sections 12 through 17 we have the jurisdiction over advertising.

But under section 5, if you had never passed sections 12 through 17, we would have had the broader jurisdiction. It is for that reason that day by day, sir, we have a very close, fine, working relationship with the Food and Drug Administration and they in the drug field take care of the labeling and we try to take care of the advertisers. But there are products like cigarettes that are not fish or fowl. A cigarette is a thing as far as I know. It is a product. It is not a drug. So the court said. It is not a drug. It is not a pesticide yet, until somebody makes it one. Therefore, it is like a pair of glasses, it is like this paper cup, it is a product. The Congress in its wisdom said to the Federal Trade Commission, "That is your job, including labeling if it is deceptive."

Mr. YOUNGER. Can you see setting up withdrawal clinics for the glasses or the cup?

Mr. DIXON. I hope not.

Mr. YOUNGER. The Surgeon General proposed to set up withdrawal clinics with regard to smoking which I think puts this particular product in a different class than your glasses or your cup?

Mr. DIXON. Congressman, I will defer to the Surgeon General of the United States on the problems of health. From what I have read in this report I would think it is a very serious problem, and I think it is in the proper hands and what should be done as to the overall health problem, I think that is his responsibility to recommend to you and if you see fit to follow his recommendation, I would say, he would be permitted to do it.

Mr. YOUNGER. He is not asking for anything. He says he already has the power to do all these things. You say you have all the power to do these things?

Mr. DIXON. I don't read anything that says that he has any legal authority now to proceed from the remedy standpoint. Remedy standpoint by law; that is, any basic legal authority for him to proceed as of this moment. I think what he was saying is that he though you ought to amend a law so that they could do this.

Mr. YOUNGER. You mean to say he didn't say they have jurisdiction over the labeling?

Mr. DIXON. Of cigarettes. I think he said, it was reported to me—I have not read the transcript, I read his statement—I found nothing in his statement that he has the jurisdiction over the labeling of cigarettes. I think he said you would have to pass a law amending their authority for him to do this.

Mr. YOUNGER. In your investigation in connection with the advertising do you anticipate that you are going to ask for the Internal Revenue reports of these companies?

Mr. DIXON. On these companies on advertising?

Mr. YOUNGER. Yes.

Mr. DIXON. I don't think it will be necessary, sir.

Mr. YOUNGER. Do you think you have the power to ask for an Internal Revenue report on the corporations?

Mr. DIXON. Only under the strictest type of Executive order that has been issued, sir. It is the only way we or anyone else could.

Mr. YOUNGER. Are there any such orders issued?

Mr. DIXON. There are outstanding Executive orders dealing with the procedures that must be followed and must be met if any information is desired or will be sought from the Internal Revenue Service. The first use of these, as I recall, specifically dealing with the Federal Trade Commission and it was rather narrow, was issued by President Truman and two were issued by President Eisenhower. I think those were the three that I have reference to.

Mr. YOUNGER. In the court cases since 1961, what percentage of your cease-and-desist orders which have been contested in the circuit court has the court decision been against the Commission?

Mr. DIXON. When we are talking about rulemaking we have not had a contest on rulemaking as yet in any court. We have had many, many contests upon adjudicative cases. Just many of them. This is the procedure that is outlined by the Congress. You didn't empower five fellows like me to be absolute on anything. You gave us responsibility to proceed, and we could only make a finding based upon evidence.

If that finding when it was reviewed in court was supported by substantial evidence then the circuit court of appeals must approve. Even there it is not final because certiorari can be applied for to the Supreme Court and only when the Supreme Court is through does the procedure end.

Mr. YOUNGER. Where you have issued cease-and-desist orders?

Mr. DIXON. We have won about 90 percent of them in the court.

Mr. YOUNGER. Will you check the records and furnish that for the record?

Mr. DIXON. It would be pretty difficult for me to do.

Mr. YOUNGER. Since 1961?

Mr. DIXON. That won't be hard, sir.

Mr. YOUNGER. Will you furnish those figures for the record?

Mr. DIXON. Yes, sir.

(The information requested follows:)

TABLE IV.—*FTC orders affirmed and reversed, on review by courts of appeal and the Supreme Court, fiscal years 1959 through 1963*

Fiscal year classes of cases	Number of appeals decided	Number of decisions			Percent of decisions		
		Affirming FTC		Reversing FTC	Affirming FTC		Reversing FTC
		In full	In part		In full	In part	
1963:							
Deceptive practice	5	5	0	0	100.0	0	0
Monopoly and discrimination	7	4	1	2	57.2	14.3	28.5
Total	12	9	1	2	75.0	8.3	16.7
1962:							
Deceptive practice	16	14	1	1	87.6	6.2	6.2
Monopoly and discrimination	11	7	2	2	63.8	18.1	18.1
Total	27	21	3	3	78.0	11.0	11.3
1961:							
Deceptive practice	11	9	0	2	89.9	0	18.1
Monopoly discrimination	4	3	0	1	75.0	0	25.0
Total	15	12	0	3	80.0	0	20.0
1960:							
Deceptive practice	10	10	0	0	100.0	0	0
Monopoly and discrimination	3	3	0	0	100.0	0	0
Total	13	13	0	0	100.0	0	0
1959:							
Deceptive practice	9	8	1	0	89.0	11.0	0
Monopoly and discrimination	8	5	1	2	62.5	12.5	25.0
Total	17	13	2	2	76.3	11.9	11.9

Source: Federal Trade Commission annual reports and files.

	Percent
Average percentages of cases (all cases) affirmed in toto by the courts during 1961, 1962, and 1963	77¾
Average percentage affirmed in part, (same 3 years)	6¼
Average percentage reversed (same 3 years)	16
Total	100

Mr. YOUNGER. That is all.

Mr. ROBERTS. So that the record will be clear as to what the Surgeon General said concerning his authority in the field of labeling, I would like to read this from page 3 of this testimony if I may:

The regulation of labeling of cigarette packages could, the Department believes, be more effectively dealt with by appropriate amendments to the Federal Hazardous Substances Labeling Act which our Department administers through the Food and Drug Administration, utilizing the kind of enforcement provisions, techniques, staff, and experience that have proven themselves under the Food and Drug Act after which the Hazardous Substances Labeling Act is in large measure patterned.

The Department intends to develop, in cooperation with interested agencies, specific legislative proposals to carry out these views.

That is from page 3 of the Surgeon General's statement yesterday.

Mr. DIXON. That is what I had in mind when I was trying to answer the question.

Mr. ROBERTS. The gentleman from North Carolina.

Mr. KORNEGAY. Mr. Dixon, as I understand it from your statement and from your answers to various questions, you take the position that the Federal Trade Commission has the authority not only to prevent

deceptive advertising but also to require of persons doing the advertising to do certain things?

Mr. DIXON. You are talking about remedy. That is preventing deception in and of itself. In other words, the requirement to go beyond just what you said is prevention.

Mr. KORNEGAY. Put it another way, you have the authority to tell or dictate to a company what type of advertising they will put out?

Mr. DIXON. No, sir, we do not. We don't tell anyone that. It would be an impossible job.

Mr. KORNEGAY. Aren't you doing that when you tell a cigarette company that in any advertising they must: Rule 1, "Either one of the following statements shall appear clearly and prominently in every cigarette advertisement and on every pack, box, carton, or other container in which the cigarettes are sold to the public, (A) 'Caution, cigarette smoking is a health hazard. The Surgeon General's Advisory Committee on Smoking and Health has found that cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate.' Or (B) 'Caution. Cigarette smoking is dangerous to health, it may cause death from cancer or other diseases.' "

Aren't you there telling the cigarette manufacturers what they must put on every cigarette advertisement and on every container in which cigarettes are sold to the public?

Mr. DIXON. If you read those rules very carefully you will see that we—that they were tentative and they were done for the purpose of eliciting comment, objections, advice, guidance, support, objections. If you will read the one we have promulgated as soon as it is printed and sent to you, you will find it is in the general language of a requirement not telling you how, that is, the exact words which must be used.

Because there are many ways to get that thought over without just those words. But to eliminate deception the warning must be there. You may say the one way and I might say it another. But if it gets over.

Mr. KORNEGAY. In other words, the rule which you say you are going to promulgate will carry a requirement that some sort of warning be placed on the package and in the advertisement?

Mr. DIXON. I don't want to tell you now what it is. I think it would be much better for you to read it in its final form.

Mr. KORNEGAY. You have already said, I believe, sir, that you have made the decision on this matter?

Mr. DIXON. That is right, sir.

Mr. KORNEGAY. It is at the printers now, sir?

Mr. DIXON. That is right.

Mr. KORNEGAY. How long will it be before we will have the opportunity to see it?

Mr. DIXON. Just as quickly as you want it.

Mr. KORNEGAY. I would like to have it now if I could.

Mr. DIXON. I will tell you frankly I have had my printers working night and day for several days and I have just so many copies. If you have one, I have no objection. I don't think my other Commissioners have. I don't know how many they have up to right now. There are probably 400 or 500 wanted the instant that it is ready and released.

Mr. KORNEGAY. Let me put it this way. Would it be possible to provide the members of the committee with a copy of it before you finish your testimony?

Mr. DIXON. I don't think I should, sir. That is a publication as far as I am concerned. I think it should be published. I have no objection. I will tell you this. If you want it before noon today I will hand it to you if I have enough. They will probably let the public take a crack at it and everybody else, every agency and the tobacco industry who will want it real fast any they are entitled to it.

Mr. KORNEGAY. I know. At the moment I think the members of the committee stand in more need of it than anyone else because we are in the process of hearing this matter.

Mr. DIXON. This is the reason I suggested you should have it.

Mr. KORNEGAY. There are many questions we should like to ask you in connection with it.

Mr. DIXON. Would you like to ask me now or would you like to study this and ask me to come back?

This is a 200-some-odd-page report. I have it in my hand here, sir.

Mr. KORNEGAY. I would like to ask you, sir, what changes you made in the rule or in the suggested form which you put in the notice of the rulemaking proceeding?

Mr. DIXON. What changes we made, sir?

Mr. KORNEGAY. Yes, sir. In other words, how does it read now? How does it read in your report?

Mr. DIXON. You know I was raised to where I never kept anything from a committee of Congress that wanted it at any time, sir. But I think it should go out at one time. Commissioner Elman is here. Would you come forward, please, sir?

Mr. SCHENCK. Mr. Chairman, will the gentleman yield for a quick statement?

Mr. KORNEGAY. Yes, sir, I would be happy to.

Mr. SCHENCK. It would seem to me, Mr. Chairman, that this bears directly on the point. The people of the United States are more and more and more becoming regulated, becoming told what they can and cannot do and how they may or may not do it by rules and regulations of bureaus composed of members who have been appointed but never elected rather than by laws passed by the Congress, the Members of which are elected by the people of the United States. It would seem to me certainly proper and right that this committee ought to be the first to know what rules and regulations this appointed Commission proposes to put out before made applicable to the public. I had no idea that the Members of the Congress were to be kept in the dark by the very agencies it creates and thus be required to learn such rules and regulations through the newspapers or other media. It appears to me such regulatory agencies are far exceeding this authority.

Thank you.

Mr. KORNEGAY. Thank you very much, Mr. Schenck, for your statement.

Mr. YOUNGER. Would the gentleman yield for one question?

Mr. ROBERTS. The committee will please be in order.

The Chair would like to state that our colleague is entitled to his opinion concerning what is going on in the country. I have mine,

too. I feel that if the Chairman of the Commission wishes to make this report available, and certainly enough copies should be made available so that every member of the committee can have the report, the Chair would certainly feel that he should be given a reasonable time in which to produce these reports. I understood him to say that he had no objection to making the report available, and with all deference to the gentleman from North Carolina I think every member of the committee should have the information.

Mr. DIXON. Mr. Chairman, I would like to introduce Commissioner Elman to you gentleman. I have with me this morning 25 copies which my printer handed me. They are in brief cases around here. I can get them.

He told me and I am informed by Commissioner Elman that perhaps by noon he could have 500 copies of this. This has to be bound. These were hand bound. My only reluctance, gentlemen, frankly was to say if it is released it is released. It is a public document. We have taken action and we are going to release this. It is just a question of having enough when you make a release. I guess we will have 500 of them down there by noon. I have no reluctance and I will hand them right now—I have 25 or so of them now.

Mr. KORNEGAY. There are 16 members here now on the committee.

Mr. ROBERTS. Just get enough for everybody here.

Mr. DIXON. We will bring the others here.

Mr. ROBERTS. The Chair appreciates the cooperation and that settles that question.

Mr. KORNEGAY. Mr. Chairman, in connection with that I would like the record to show that I thought I made the suggestion or asked the chairman if he could furnish each member of the committee with a report. I certainly was not trying to get one for myself to the exclusion of the remainder of the committee.

Mr. ROBERTS. I understand. I just want to make it clear that we are all vitally interested in this matter. I appreciate the thoughtfulness of the gentleman from North Carolina in making this request.

Mr. DIXON. I would like to publicly state, Mr. Chairman, that this report is hereby released. I would like to inform any members of the press, of the industry, or any party that wants one to go to the Federal Trade Commission and ask for it.

Mr. ROBERTS. The gentleman from North Carolina.

Mr. KORNEGAY. I am not able to find it yet, but I will, Mr. Dixon——

Mr. DIXON. If you will look on page 1, sir. That is the one you are talking about. "Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes," in relationship to the health hazards of smoking. I could read the first paragraph. I think it would be real important to read it. It is not very long. This is all that needs to be said:

The Federal Trade Commission pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C., section 41, and the provisions of subpart (f) of the Commission's Procedures and Rules of Practice (28 F.R. 7083–7084 (July 1963)) has conducted a proceeding for the promulgation of a trade regulation rule, or rules, for the prevention of unfair or deceptive acts or practices in the sale of cigarettes. Notice of this proceeding, including a set of proposed rules, was published in the Federal Register on January 22, 1964 (29 F.R. 530–532). Interested parties were thereafter afforded an opportunity to participate in the proceeding through the submission of written data, views, and argument and to appear and express orally their views as to the proposed rules and to suggest

revisions thereof and amendments and additions thereto. In adopting this rule, the Commission has given due consideration to all such views, data, and argument together with all other relevant matters of fact, law, policy, and discretion.

The Commission on the basis of the findings made by them in this proceeding, as set forth in the accompanying statement of basis and purpose of trade regulations rule hereby promulgates as a trade regulation rule its determination that in connection with the sale, offering for sale, or distribution on commerce (as "commerce" is defined in the Federal Trade Commission Act) of cigarettes, it is an unfair or deceptive act or practice within the meaning of section 5 of the Federal Trade Commission Act (15 U.S.C., sec. 45) to fail to disclose, clearly and prominently, in all advertising and on every pack, box, carton, or other container in which cigarettes are sold to the consuming public that cigarette smoking is dangerous to health and may cause death from cancer and other diseases.

For the purpose of this rule: (1) "Cigarette" means any roll of tobacco wrapped in paper or otherwise commonly considered as cigarette. (2) "Advertising" includes all radio and television commercials, newspapers and magazine advertisements, billboards, posters, signs, decals, matchbook advertising, point-of-sale display material, and all other written or other material used for promoting the sale or consumption of cigarettes but does not include the labeling of packs, boxes, cartons, and other containers in which cigarettes are sold to the consuming public.

Paragraph 4:

In the event that any person subject to this rule is of the opinion that new or changed conditions of fact or law, the public interest or special circumstances require that the rule be suspended, modified, waived or repealed as to him, or otherwise altered or amended, such person may file with the Secretary of the Commission a petition to reopen this rulemaking proceeding, stating the changes desired and the grounds therefor. The Commission will act on the petition as provided in section 1.66 of the Commission's Procedures and Rules of Practice.

Gentlemen, I want to make this perfectly clear. Paragraph 5:

Except with respect to advertising, this rule shall become effective on January 1, 1965.

Paragraph 6:

With respect to advertising, this rule shall become effective on July 1, 1965, provided, however, that the Commission will entertain an application prior to May 1, 1965, by any interested party to postpone the effective date or otherwise suspend, modify, or abrogate the provisions of the rule as to advertising, upon a showing of such change in circumstances as to justify such requested action in the public interest.

That simply means that as of January 1, 1965, the rule would require or become effective as to the box or the carton or the package. As to advertising, July 1, 1965, unless a petition is filed before May 1, 1965, for good reasons stated, telling us why it should be suspended, modified, or changed.

Mr. KORNEGAY. In other words, the change which you came up with from your proposed trade regulation rules, as I read them into the record a few minutes ago, is to the effect that in all advertising on every pack, box, carton, or other container in which cigarettes are sold to the consuming public, must carry the warning that cigarette smoking is dangerous to health and may cause death from cancer or other diseases?

Mr. DIXON. That could be stated in many ways and it is open ended. It doesn't say just those words but that thought must be there.

Mr. KORNEGAY. You use the same words that you used in subsection (b) under the proposed trade regulations; is that right, sir?

Mr. DIXON. On page 151 of this report we had this to say.

Mr. KORNEGAY. Let me get that in the record. The same wording as (b)?

Mr. DIXON. Differently arranged but the same wording.

Mr. KORNEGAY. You don't have the word "caution" but you do have cigarette smoking is dangerous to health and may cause death from cancer and other diseases. Then you have a period.

Mr. DIXON. We don't have a colon, we don't have a period and a quote. That means you can say it some other way.

Mr. KORNEGAY. I understand that. In other words, the advertising must contain words to the same effect as you set them forth here in paragraph 2?

Mr. DIXON. Yes, sir.

Mr. KORNEGAY. Of course, the Commission would be the judge as to whether or not any particular piece of advertising complied with this rule?

Mr. DIXON. On page 151 as to our basis and purpose of the rule on this point we said this:

> In this part of the report we discuss briefly the provisions of the trade regulation rule promulgated herewith and the requirements of compliance with it. For reasons already stated, the rule contains no provisions corresponding to rules 2 and 3 of the proposed rules published at the outset of this proceeding. The substance of proposed rule 1 remains—

That is what you were talking about; now to continue from page 157:

> but it has been modified to eliminate any requirements that a specific form or specific forms of words be used in disclosing in all advertising and labeling the health hazards of cigarette smoking. The Commission believes that the individual advertiser should be free to formulate the required disclosure in any manner and that intelligibly conveys the sense of the required disclosure in a fully conspicuous fashion. The Commission will, on request, advise whether proposed forms of disclosure comply with the requirements of the rule.

Congressman, let me say this to you. I think this should be made perfectly plain. We are not an autocratic body. Just because we have done this doesn't mean that on January 1, 1965, that this must be done because it is perfectly logical and there are many avenues open to the industry to take this procedure into court and if this happens, then it shall be suspended. It may take a long time to get the very basic question litigated. So our faith shall apply if nothing happens.

If something happens obviously it is extended. So we are now in the American procedure of review.

Mr. KORNEGAY. I understand that, Mr. Dixon. Insofar as the Commission is concerned the effective date is January 1, 1965.

Mr. DIXON. That is correct.

Mr. KORNEGAY. When did the Federal Trade Commission first adopt its proceedings or rules with reference to the formulation of trade regulation rules?

Mr. DIXON. I have quoted it right there. It was July 22, 1962. I think that is what I said.

Mr. KORNEGAY. Prior to that date had the Commission ever issued any trade regulation rules?

Mr. DIXON. Not in that form. We had issued what was called trade practice rules and we had issued something we called guides. But

nothing in this form. We adopted new rules and new procedures. This was one of our new rules and procedures.

Mr. KORNEGAY. How do you account for the fact that the statute upon which you rely was adopted back in 1914 but the Commission did not issue a single trade regulation from 1914 to 1962?

Mr. DIXON. From the very beginning the Commission issued trade practice rules. We have outstanding today probably about 180 outstanding trade practice conference rules. Over the years there have been many besides this.

Mr. KORNEGAY. Let me ask you this. Don't you think that is pretty strong evidence that the Commission never thought it had jurisdiction to issue trade regulation rules?

Mr. DIXON. I will turn to the section of this report and answer if you want me to read it.

Mr. KORNEGAY. I want an answer.

Mr. DIXON. I will assure you that has been gone into in great detail. I don't like to shoot from the hip on a thing like that because I don't have any doubt in my mind that this Commission is clothed with this legal responsibility and can proceed this way.

Mr. KORNEGAY. In other words, you take the position that the Commission had the authority all the time and just failed to use it for 48 years?

Mr. DIXON. I do, sir. From the very day of the passage of the Federal Trade Commission Act, this procedure could have been adopted and it would have been fairer and it would have been clearer and you would have had much better law enforcement had it been done, sir.

Mr. WATSON. Would the gentleman yield for one question?

Mr. KORNEGAY. Yes.

Mr. WATSON. I thought until 1938 you did not have the authority to protect the consumer. I thought it was just a matter of having fair competition among the manufacturers. Was I incorrect in your earlier testimony?

Mr. DIXON. We were protecting competition until 1938. I was just speaking in the broad vein, sir.

Mr. WATSON. Excuse me, and I thank the gentleman.

Mr. DIXON. Chapter VI of this report specifically deals with the rulemaking authority of the Federal Trade Commission. It begins on page 127 and runs through 150 specifically. We did not do this idly, sir. We did this from the standpoint of trying to carry out the responsibility that the Congress assigned us.

Up to the time that we announced this proceeding on cigarette advertising we had about a half dozen other starting. For instance, on sleeping bags and leakproof batteries and other things. We finished some of them. There has been no question about them.

When we announced this hearing the representative of the tobacco industry appeared before us and challenged our legal authority to proceed.

Mr. KORNEGAY. When was that?

Mr. DIXON. At the hearing at the Federal Trade Commission, that is right, sir. The advice we got from the tobacco industry was that we didn't have the authority to do this.

Mr. KORNEGAY. Of course, there is some basis that lawyers could agree that you didn't have the authority. The mere fact that you have gone for 48 years, the point I made, without entering into this area would indicate that.

Mr. DIXON. I point out to you, when their representative appeared before us, no question was raised as to the authority of the Commission to proceed in this field. The only question was the way we were proceeding. There was no question that we could have challenged it or could issue a complaint.

It was procedure we are talking about here.

Mr. KORNEGAY. Let me ask you this, Mr. Dixon. You have said in the past the Commission issued rules sometimes in the form of guides and sometimes as trade practice rules?

Mr. DIXON. Yes.

Mr. KORNEGAY. Now we are talking about the issuance of a trade regulation rule?

Mr. DIXON. Yes.

Mr. KORNEGAY. Can you describe to us the difference in these three types of rules and also give us the legal effects of a trade regulation rule as it differs from the other two types of rules?

Mr. DIXON. A trade regulation rule is different from a trade practice rule. I will read "Subpart F—Rules and Rulemaking." This is in the "Organization, Procedures, Rules of Practice and Statutes," published August 1963. Subpart F—Rules and Rulemaking, on page 18, section 1.61, entitled "Scope of the Rules on This Subject":

These rules apply to and govern procedure for the promulgation of trade practice rules, trade regulation rules, quantity limit rules and rules authorized under the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, the Flammable Fabrics Act, and the Textile Fiber Products Identification Act. They do not apply to the promulgation of guides, general statements of policy, or rules of agency organization, procedure or practice.

Section 1.62, Trade Practice Rules:

Trade practice rules are designed to eliminate and prevent, on a voluntary and industrywide basis, trade practices which are violative of laws administered by the Commission. The rules interpret and inform businessmen of legal requirements applicable to the practices of a particular industry and provide the basis for voluntary and simultaneous abandonment of unlawful practices by industry members. Failure to comply with such rules may result in corrective action by the Commission under applicable statutory provisions.

Section 1.63, Trade Regulation Rules:

(*a*) *Nature and authority.*—For the purpose of carrying out the provisions of the statutes administered by it, the Commission is empowered to promulgate rules and regulations applicable to unlawful trade practices. Such rules and regulations (hereinafter called trade regulation rules) express the experience and judgment of the Commission, based on facts of which it has knowledge derived from studies, reports, investigations, hearings, and other proceedings, or within official notice, concerning the substantive requirements of the statutes which it administers.

(*b*) *Scope.*—Trade regulation rules may cover all applications of a particular statutory provision and may be nationwide in effect, or they may be limited to particular areas or industries or to particular products or geographic markets, as may be appropriate.

(*c*) *Use of rules in adjudicative proceedings.*—Where a trade regulation rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve such issue, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the particular case.

On page 128 of the report, we start a discussion of the lawfulness of the trade regulation rule procedure and we quote from the Administrative Procedure Act among other things, which bear on this subject. For instance, here we have the trade regulation rules. Section 2(c) of the Administrative Procedure Act provides that—

"Rule" means the whole or any part of any agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy—

In a leading case the Supreme Court has stated:

Unlike an administrative order or a court judgment adjudicating the rights of individuals, which is binding only on the parties to the particular proceeding, a valid exercise of the rulemaking power is addressed to and sets a standard of conduct for all to whom its terms apply. It operates as such in advance of the imposition of sanctions upon any particular individual.

This citation is from *Columbia Broadcasting System* v. *The United States*, 316 U.S. 407.

Then we move along into section 5(a)(1) of the Federal Trade Commission Act, which declares unlawful all unfair methods of competition and unfair deceptive acts or practices in interstate commerce. The basic and comprehensive grant of power to the Commission to enforce section 5(a)(1) is contained in section 5(a)(6), which empowers and directs the Commission to prevent the use of such unfair and deceptive methods, acts and practices.

The promulgation of a trade regulation rule is an exercise of the power and duty created by section 5(a)(6). The issuance of a cease-and-desist order under section 5(b) is merely one form of exercising the general power conferred by section 5(a)(6). A trade regulation rule, to use the language of the Supreme Court, "is addressed to and sets a standard of conduct for all to whom its terms apply."

It operates as such in advance of the imposition of sanctions upon any particular individual. The Supreme Court has held that—

the choice made between proceeding by general rule or by individual ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency. (*SEC* v. *Chenery Corporation*, 322 U.S. 194.)

Going back under our rule as I read you from our Organization, Procedures, Rules of Practice and Statutes, when I referred to trade practice rules you noticed the word "voluntary," for guidance. This means that under this type of guidance that if a party, whom the rule would be meant to guide, ignored it and violated it, we would start and charge him with a law violation making no mention or reference to the rules. But under this rule that we are talking about here, we are talking about a trade regulation rule. It refers to a proceeding where we will notice this type of rule and rely upon it.

Mr. KORNEGAY. In other words, is it fair to say that the trade practice rule is advisory in nature?

Mr. DIXON. So is this one advisory in nature.

Mr. KORNEGAY. It is advisory but it is stronger than just being advisory. It has the force of law.

Mr. DIXON. The difference is really the factfinding function.

Mr. KORNEGAY. Yes, sir; and you will bring your action based on the trade regulation rule. Is that right, sir?

Mr. DIXON. I think it is partially right. Let me read you this paragraph, which sums it up succinctly:

The Commission's determination in this proceeding, embodied in the trade regulation rule, is in essence a definition of standards of conduct—

I am reading from page 151:

required by the Federal Trade Commission Act, and thus serves the function of informing the members of the cigarette industry of what the law prohibits them from doing in the area of cigarette advertising and labeling in relation to the health hazards of smoking. In promulgating such a rule, the Commission fulfills its statutory obligation, under section 5(a)(6) of the Federal Trade Commission Act, "to prevent persons" subject to the law "from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

For—

Congress envisioned that once businessmen were informed clearly and unequivocally and, in advance, of what practices were deemed unlawful by the Commission, they would abandon them. It is the Commission's general policy, therefore—a policy no less applicable in the present matter than in other matters—to encourage voluntary, simultaneous, and industrywide abandonment of unlawful trade practices in order to avoid resort to formal enforcement proceedings and sanctions.

Because the Commission desires to encourage voluntary compliance with this trade regulation rule and recognizes that immediate conformity to the requirements of the rule may present practical difficulties for the industry, it has determined that, following the promulgation of the rule, the industry should be allowed a reasonable period of time for voluntary compliance. For example, questions may arise as to the interpretation and application of the rule in particular circumstances. The Commission's offices will be open for any industry member who has such a question to seek definitive advice, in advance, from the Commission. The Commission also recognizes that even though the rule imposes the minimum requirements necessary to bring the industry's conduct into conformity with Section 5 of the Trade Commission Act, it will necessitate changes in the present advertising and labeling of cigarettes that may require some time to implement—

and so on.

There is a last paragraph which reads:

The Commission's objective in this proceeding has been to inform and guide, not to pass judgment upon past or present actions of the cigarette industry. Trade regulation rules are preventative, not punitive, in nature. They are intended to avert rather than promote litigation. The Commission desires neither to inflict economic injury on the cigarette industry nor to involve the members of the industry in cease-and-desist-order proceedings. The Commission has, therefore, endeavored to prescribe a program of compliance that will involve a minimum of uncertainty, dislocation, and formal enforcement and, at the same time, fully protect the public interest.

Mr. ROBERTS. The Chair would like to state that the House is in session and the committee will now recess until 2 p.m. this afternoon. We will resume our sitting provided we get permission, which must be under the rule by unanimous consent, in order to proceed.

I would ask that witnesses, the press, interested parties, and members please check with the clerk before you come back at 2.

(Whereupon, at 12:05 p.m. the committee recessed, to reconvene at 2 p.m. of the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Hon. Kenneth A. Roberts presiding.)

Mr. ROBERTS. The committee will please be in order.

When the committee recessed this noon, Mr. Kornegay had been recognized and was engaged in questioning the Chairman.

Mr. Kornegay.

Mr. KORNEGAY. Shall I resume, Mr. Chairman?

Mr. ROBERTS. Yes, please.

Mr. KORNEGAY. Mr. Dixon, I believe at the end of the morning session I had asked you a question with reference to the different types of proceedings that you had and the differences between those proceedings. Is that right, sir?

STATEMENT OF HON. PAUL RAND DIXON, CHAIRMAN, FEDERAL TRADE COMMISSION; ACCOMPANIED BY JOHN V. BUFFINGTON, ASSISTANT TO THE CHAIRMAN; JOHN N. F. WHEELOCK, EXECUTIVE DIRECTOR; AND FLETCHER COHN, ASSISTANT GENERAL COUNSEL, LEGISLATION—Resumed

Mr. DIXON. Yes.

Mr. KORNEGAY. Guides, trade practice rules, and trade regulation rules?

Mr. DIXON. That is right.

Mr. KORNEGAY. Mr. Chairman, I wish you would clarify or state precisely for me the legal effect of the trade regulation rule?

Mr. DIXON. It has embodied in it, of course, advice and guidance. From a procedural standpoint, contained on page 19, under our section 1.63, trade regulation rules, subsection (c), is entitled "Use of rules in adjudicative proceedings" is this statement:

> Where a trade regulation rule is relevant to any issue involved in an adjudicative proceeding thereafter instituted, the Commission may rely upon the rule to resolve such issue, provided that the respondent shall have been given a fair hearing on the legality and propriety of applying the rule to the particular case.

I think that is the legal aspect of it, sir.

Mr. KORNEGAY. In other words, it would have the effect of substantive law, so to speak, in any future proceeding brought under the rule. Is that right? In other words, it would not be necessary for you to go back and prove in court the elements that went into the making of the rule?

Mr. DIXON. That is right, sir.

Mr. KORNEGAY. As to a trade practice rule, it would be necessary in the event of any subsequent action by the Commission for you to prove de novo your case?

Mr. DIXON. You are correct, sir.

Mr. KORNEGAY. Do you take the position that this is true notwithstanding the fact that during the course of the hearings adopting these rules that there was no opportunity provided for cross-examination?

Mr. DIXON. I do, sir.

Mr. KORNEGAY. And that there was no opportunity for anyone who might disagree with the proposed rules to subpena a witness and have them testify before your Commission?

Mr. DIXON. That is right, sir. But I point out to you that anyone that disagreed had an open opportunity and adequate time either to file or appear in person and testify and develop fully his views. After he had appeared and testified, he had a further opportunity to file further views.

Mr. KORNEGAY. None of those witnesses who appeared and testified were sworn or put under oath; were they?

Mr. DIXON. That is right, sir.

Mr. KORNEGAY. Do you feel that is due process?

Mr. DIXON. I do, sir. I think this meets fully the requirements of the Administrative Procedure Act and the constitutional requirements as well.

Mr. KORNEGAY. I would like to ask you, Mr. Commissioner, for your definition of "deception"?

Mr. DIXON. Sir, if you ask me for my definition of an unfair method of competition or my definition of an unfair practice I perhaps would have to go back and refresh your recollection and review for you the orderly development of this term. I had rather not just "shoot from the hip."

Mr. KORNEGAY. I am just asking you for a definition of "deception" at the moment.

Mr. DIXON. A deceptive practice is included in our law. When the Congress and this committee was one of the parent legislative committees where this basic law was devised and passed—these terms were left open-ended, you might say. They were left for a development under procedures outlined in the statute, which are reviewable by the courts. This is commonly referred to in the law as being the "doctrine of exclusion and inclusion."

Meaning that since the words "unfair or deceptive practices" came into the law in 1938, we now have some 26 years of casebook history by which these various aspects of deceptions have been developed—deceptive practice, unfair practice.

Mr. KORNEGAY. Just what is "deception"? That is what I am getting at. Does it have any different meaning when it is used by the Commission that it doesn't have when you read it in the dictionary or when people in ordinary conversation use the term?

Mr. DIXON. Under the statutory provisions of the Federal Trade Commission, when a practice occurs—a deceptive practice occurs—in commerce and the Commission is of the opinion that it would be in the public interest to proceed against it, then the Commission must proceed under some procedure one way or another.

Mr. KORNEGAY. The Commission is bound to some extent by the definition of the words that are placed in the law; aren't they, Mr. Commissioner?

Mr. DIXON. There is no definition of deception within the law other than as the law has been developed.

Mr. KORNEGAY. In other words, you take the position that it means just whatever you want it to mean?

Mr. DIXON. No, sir. It is deceptive when it has the capacity to deceive.

Mr. KORNEGAY. To mislead?

Mr. DIXON. This is correct.

Mr. KORNEGAY. To beguile?

Mr. DIXON. On page 84 of this report, under the heading "Deceptive Acts or Practices," this we have written and decided:

> Advertising that prevents the consumer from making a free and informed choice of what or whose products to buy by misrepresentating facts that the consumer considers material to his decision injures honest competitors and the consuming public.

Mr. KORNEGAY. By misrepresenting facts?

Mr. DIXON. It doesn't have to be by misrepresenting. There can be a misstatement of fact which is a misrepresentation. It can be a half-truth or it can be a failure to tell the whole truth. So you have got to go all the way.

Mr. KORNEGAY. Let me give you a specific example and get your ideas on it. Suppose a company manufactures and places on the package of cigarettes simply the name "Smith Bros. Cigarettes," made in so and so, and nothing else but that. Would you say that was deceiving or deceptive advertising?

Mr. DIXON. Not possibly standing by itself. But examined within the context of the way these products are merchandised and sold—advertised and sold—then I think the controlling thing is, as we have said here, that if the seller attempts to deceive the consumer in any particular, which could influence the latter's buying choice—if in other words he uses any false inducement—he has committed a deceptive act or practice in violation of section 5. Here we have cited to you this legal principle as it was developed over this period of time, some 50 years, and specifically since the act was amended some 26 years ago, I believe. We have cited the case here of *FTC* v. *Raladan Co.* (316 U.S. 149) a 1942 case.

Mr. KORNEGAY. Excuse me, Mr. Commissioner, for interrupting you. But let me just ask you if that package of cigarettes simply had on it "Smith Bros. Cigarettes," if that in itself would be deceptive or unfair under the law?

Mr. DIXON. If you are saying this is the first act that had ever happened with the cigarettes and the only way the cigarettes were sold, and a person put "Smith Bros." on his package and sent people out to sell it, no one mentioned anything about it, but they just offered it to sale, whether or not Smith Bros. cigarettes would be deceptive or not would be a complete new set of circumstances that would have to be examined, sir. I would be rather doubtful of it.

Mr. KORNEGAY. You have no opinion about it at the moment?

Mr. DIXON. Sir, because we are in a complete set of circumstances that I am not familiar with.

Mr. KORNEGAY. You can't tell me then at the moment, or you have no opinion, as to whether or not that would be deceptive or unfair advertising?

Mr. DIXON. I don't think that I should hazard such a from-the-hip type of opinion to you, because you did not set this Commission up like this. You set this Commission up with responsibilities of procedure to examine into all of the facts, and then only after those facts are examined to make a finding. If you had decided that you wanted us to just do this you could have said by law, here are five men, called the Federal Trade Commission and anything they decide is deceptive, they can say is deceptive and that is the end of it. But that is not the way you did it.

Mr. KORNEGAY. Now I think we are getting down to the point. You say look into it. All you have there, in your authority over advertising is, as I stated, the simple brand of the cigarettes, called "Smith Bros. Cigarettes."

What more do you have to look into in order to determine whether that is an unfair or deceptive trade practice?

Mr. DIXON. I would say we would have to look into the complete merchandising, labeling.

Mr. KORNEGAY. I have given you the label.

Mr. DIXON. This is all you have given me. If that is all I could look at that is all I could look at.

Mr. KORNEGAY. Do you think you have the responsibility and the authority to look into the content of that package?

Mr. DIXON. We have the responsibility to look into anything that sells as that package, sir.

Mr. ROBERTS. With all due respect to the considerable legal abilities of the two gentlemen engaged in this particular point, let us see if we can't move on because we have about six or eight members who have questions. The gentleman knows I try to be as lenient as I can but I feel we will have have a quorum call and I would like to try to finish this witness' testimony this afternoon.

Mr. KORNEGAY. Mr. Chairman, I certainly do not intend or want to unduly delay this. At the same time I must state that it is a matter of tremendous importance to this country that we do go into it in some detail.

Mr. DIXON. Mr. Kornegay, beginning on page 99 of this document under chapter V, the heading of which is "The Requirements of the Federal Trade Commission Act With Respect to the Marketing of Cigarettes, in Light of the Health Hazards of Smoking," is a discussion of this general problem. You will find (A) "Affirmative Deceptive Advertising," (B) "The Seller's Duty To Disclose the Health Hazards of Cigarette Smoking," and so on and so on. I have particular reference, if you approach page 103 under that heading the statement:

> In short, although advertising claims respecting the satisfactions of smoking or respecting health or the safety features of a particular brand are not necessarily untruthful in themselves, standing alone, they are at best half-truths. They may be literally true, yet they are still likely to convey the false impression that cigarette smoking is not dangerous to human life and health. The disclosure of the hazards of smoking is necessary to correct a deceptive half-truth.

During the discussions and the hearings that we held, I am reminded of the proposition in the common law of implied warranty of safety. He who takes it upon himself to sell in interstate commerce an article that may be dangerous or is dangerous without revealing that upon the product is committing a deceptive act, in that there is the implied doctrine that it is safe.

It could be possible that your example of Smith Bros. cigarettes, doesn't warn anyone who would buy the package of cigarettes, that they could be harmful. There is no statement on that. He who buys that could possibly under established legal doctrines accept the fact that it is safe. This could cause some lawsuits in this industry, sir.

Mr. KORNEGAY. Of course, there are many other things that would fit into that category.

Mr. DIXON. That is right, sir.

Mr. KORNEGAY. For example, I saw a television commercial last night of one of our leading airlines, and they were presenting their product, their transportation, in the best light. But nowhere during the course of that advertising did they warn the public that it could

be dangerous to fly in an airplane. Does the Commission plan or have any idea of stepping into that area?

Mr. DIXON. I point out to you, sir, and I know you are familiar with this because it comes right here. Airlines are licensed. You have created a licensing agency to license them in the first place. You have created a Federal aviation authority to provide for safety standards and regulations and they are very closely checked. You have set up every kind of an avenue humanly possible to regulate this industry.

Cigarettes are not so regulated. This is not a regulated industry at all.

Mr. KORNEGAY. Let me move on to the next example. Of course, everybody knows whiskey can be very detrimental to one's health. Does the Commission have any plans to move in and start marking every bottle of whiskey that is made and manufactured?

Mr. DIXON. I point out to you again that under the direction of the Congress this matter has been turned over to the Treasury Department. I am reminded of this fact.

Mr. KORNEGAY. You haven't had the same authority under the act to regulate another commodity as you do cigarettes, have you?

Mr. DIXON. I would not go so far as to say that, but I will make this further comment on alcoholic beverages. It is my understanding that by State, by local custom, licensing of the sale of alcoholic beverages is very closely controlled. It is precluded by law to sell them to minors. People that do it can be put into jail. Nothing like this applies to cigarettes.

Mr. KORNEGAY. Don't you have in most States a statute that makes it a misdemeanor to sell cigarettes to anyone 18 or under?

Mr. DIXON. There are some States.

Mr. KORNEGAY. There is one in my State.

Mr. DIXON. I don't know who watches the vending machines.

Mr. KORNEGAY. Let me ask you this. If the Commission has jurisdiction in this field over cigarettes why would it not likewise have jurisdiction and authority over other commodities which can produce harmful results if used to excess?

Mr. DIXON. Mr. Kornegay, the Commission has the broadest of all type responsibility. But what would precipitate a need for the exercise of that responsibility in the public interest is an individual set of facts that one must examine. We have commented, and these things were put forward during our hearings about alcohol and automobiles. We discuss them in this report.

Mr. KORNEGAY. We could go on ad infinitum with these products and I am not going to do that. Let me ask you this, sir. Your rulemaking procedures were adopted as a result of the issuance of the report to the Surgeon General on smoking and health, is that right, sir?

Mr. DIXON. That is what precipitated it.

Mr. KORNEGAY. That report is the basis for this rule?

Mr. DIXON. It is one of the bases, sir.

Mr. KORNEGAY. What are the other bases?

Mr. DIXON. The hearings and all the other reports that have been issued. We have taken notice of them. They are in this record. These are records that have been issued around the world and by various agencies and recognized authorities in this field.

Mr. KORNEGAY. There have been many other reports issued by government study groups in other areas?

Mr. DIXON. There have.

Mr. KORNEGAY. Certainly in the area of alcohol or whiskey?

Mr. DIXON. I understand that, sir.

Mr. KORNEGAY. And the Commission has taken no action in that area?

Mr. DIXON. I know of no one under the aegis of our principal health officer, the Surgeon General, that has put together such a comprehensive group as was put together here, sir, to examine that by these types of tests and examinations. I don't know what will be decided in the future about the other products. All I know is that this is the product here that we examined into.

Mr. KORNEGAY. During the course of your testimony here and in the questioning you have acknowledged that the trade regulation rule which you have issued now does not have a preemptive effect. I assume that you have also agreed that there is substantial controversy as to whether the Commission has the power to issue a trade regulation rule and knowledge of the fact that there no doubt will be protracted litigation. You are, of course, aware of the fact that the Surgeon General has proposed that the regulations of labeling be entrusted to the Pure Food and Drug agency. In view of all these circumstances, don't you feel that it would be preferable for Congress to act first in this situation?

Mr. DIXON. I make it perfectly plain to you, Mr. Kornegay, we are a creature of the Congress. But until the Congress changes our basic responsibility I think we are dutybound to act. If the Congress passed a law removing this from our jurisdiction and vesting it somewhere else then we are relieved of that responsibility. If the Congress of the United States would pass a joint resolution saying you wanted us to not do anything I assure you we will not do it. But until that happens I am sworn and dutybound to enforce this law as it presently is on the statute books.

Mr. KORNEGAY. And you will go ahead with your rules?

Mr. DIXON. This is correct, sir. We will go right ahead. You are correct.

Mr. WATSON. Would the gentleman yield at this point?

Mr. KORNEGAY. Yes.

Mr. WATSON. Mr. Chairman, the last sentence in your testimony stated, in effect, that you requested this committee to withhold any decision on the bills now pending until such time as we could study this voluminous report which we received just today.

Mr. DIXON. That is right. I though that the purpose of that remark from my standpoint was, based upon my following these hearings and my understanding of what was before you in the various bills.

Mr. KORNEGAY. Pursuing the question that my colleague propounded to you a moment ago, if you would make such a request of this committee to withhold any action until such time as we studied your report, how can you justify going ahead and precipitously taking action yourself without waiting until such time as this committee should discuss bills and arrive at a decision? You are asking us to do something which you yourself are unwilling to do.

Mr. DIXON. We are enforcing the law of the land. My remark was addressed to the proposition that perhaps there was no law or you needed a new law. I simply suggested that you examine what we have done and what we have said to determine whether you think there is any new law needed in this field.

Mr. WATSON. Of course, you would recognize the fact, if the gentleman will yield further, that very likely some legislation could result from this because of the widespread interest. Don't you think it would lend itself to more orderly procedure had you not issued this rule and waited until such time as this committee should act upon it?

Mr. DIXON. If I had thought so, sir, I would have been the first to have done that. I did not think so; no, sir.

Mr. WATSON. You thought it was advisable and proper and fair to ask the committee to defer its decision, but yet you, yourself, would be unwilling?

Mr. DIXON. I beg of you to hear me out. I think they are not the same question. One is that what we are enforcing is a present law. It has been passed. What is before you is a proposed law or need for a law.

Mr. WATSON. Mr. Chairman, we are not referring to the matter of enforcing the law. We are referring to the matter of promulgating or issuing a rule which I understand was just issued just before noon today.

Mr. DIXON. That is correct, sir.

Mr. WATSON. You asked this committee to defer, but yet you, at the same time, would go ahead and issue the rule without awaiting action by this committee. That is the thing I have difficulty in reconciling in my mind: the fact that you would ask us to wait, while at the same time the Commission precipitously issues a rule which very well could go into the teeth of what this committee might ultimately decide and thus add further confusion to a very confused state of affairs.

Mr. DIXON. What was before this committee, as I understand it, are various bills to entitle the Federal Trade Commission or HEW to proceed in this field. To give authority—statutory authority—to proceed. What I have tried to say to you is we have the statutory authority and we are in the process of exercising it.

I merely pointed out that this is the way we have presently exercised it and I thought it would be a service to the committee that before the committee finally had to sit down and decide whether there was need for new legislation, that they read this report. That is all in the world I suggested.

Mr. WATSON. One final comment, and I appreciate the gentleman yielding so much. Actually it could result in a disservice, adding confusion to the situation, because now we not only have to wrestle with the problem of what to do about labeling, but also we have to consider the adjunct problem of what relation our action might have to the rule which you have just issued today. Do you not agree that is a very likely prospect of what might result?

Mr. DIXON. No, sir; I do not.

Mr. WATSON. In other words, you anticipate that this committee will go along directly with the rule which you have promulgated?

Mr. DIXON. Sir, I am not sure what the committee will do.

Mr. WATSON. Thank you very much.

Mr. KORNEGAY. Mr. Commissioner, are you familiar with the general proposition that has been adopted by the courts in interpreting acts of Congress under which, when an agency adopts a particular interpretation of the law, and subsequently the Congress amends that law without overruling the agency's interpretation, the interpretation by the agency of the law is considered to have been ratified by the Congress?

Now, since the Federal Trade Commission never utilized the trade practice regulation method, or technique, until 1962, although the Federal Trade Commission Act was amended numerous times since its original enactment in 1914, do you think the doctrine of statutory interpretation I have just set out indicates that the Commission does not have the power it has recently attempted to exercise in issuing these trade regulations?

Mr. DIXON. The court is going to pass on this question. I beg of you that I do not have to express my opinion at this time, sir.

Mr. KORNEGAY. In other words, you have no opinion at all about it?

Mr. DIXON. I would rather not express it, sir, because this is going to be a very definite question and it is going to the courts.

Mr. KORNEGAY. You acknowledged this morning that you were willing to wait for the courts to act in this matter, and certainly anticipated that there would be litigation.

Mr. DIXON. I do, sir.

Mr. KORNEGAY. But yet you are not willing to wait and give the Congress an opportunity to work its will on this matter. Is that correct?

Mr. DIXON. Sir, you are asking a legal question in point on this procedure that will be decided by some court somewhere. If you insist upon it, I will answer it, but I would think it would be far more in the public interest to let this question be reviewed in the court, because involved in it——

Mr. KORNEGAY. That was not the question, Mr. Commissioner. You indicated this morning your willingness to wait for the courts to decide this matter, but at the same time you are not willing to wait until the Congress wrestled with the problem and decided what it ought to do, if anything.

Mr. DIXON. Mr. Kornegay, this morning I was trying to point out to the committee the judicial review that I thought under our system could be applied to what we have done. It is entirely possible that is not necessary. The industry may accept what we have done. Then there will be no judicial review.

Mr. KORNEGAY. But anyway you do not think that you should hold up your action and let the Congress have the opportunity to work its will?

Mr. DIXON. It was the opinion of the Federal Trade Commission, based upon the evidence under study, which you referred to, of the report of the Advisory Committee to the Surgeon General, that it was in the public interest for the Commission to proceed.

Mr. KORNEGAY. This was not a unanimous decision by the Commission, was it?

Mr. DIXON. It was, sir.

Mr. KORNEGAY. What about the statement by Commissioner MacIntyre on page 3?

Mr. DIXON. He is speaking on the effective date of the remedy and procedure, but not as to the overall finding of the need.

Mr. KORNEGAY. He said among other things that "the vastness and importance of the problem requires that we be fairly correct in our solution before we apply it in all of its details and ramifications. This is a matter about which we cannot afford to make a mistake." He suggested that considerably more time be given. Is that not right?

Mr. DIXON. That is his statement, I believe, if you are reading it.

Mr. KORNEGAY. Commissioner MacIntyre goes on to say that—

this would leave the specific wording and other details of such warning to be worked out and evolved as developments unfold. These developments are now in evidence on all sides. Moreover, I would set the effective date for the full compliance with proper wording and in all detail, as July 1, 1965.

Mr. DIXON. That is the same date we set the ultimate one for.

Mr. KORNEGAY. You set January 1 on the labeling.

Mr. DIXON. That is the difference right there.

Mr. KORNEGAY. Was there any particular reason why you chose January 1, 1965, on labeling?

Mr. DIXON. To be reasonable, sir, we have stated why. We thought this would bring about some considerable changes and that this was a reasonable time.

Mr. ROBERTS. Gentlemen, the Chair must insist that we move on to other members.

Mr. KORNEGAY. Mr. Chairman, that terminates my questioning.

Mr. ROBERTS. The gentleman from Minnesota.

Mr. NELSEN. Mr. Chairman, first I would like to point out that I know of no Member of Congress that would resist steps that could be taken to bring more attention to the public of the dangers of cigarette smoking. But I am frankly surprised the notice of the hearing was relative to a large number of bills by Thompson, Fino, Udall, Blatnik, Riehlman, and so on. I am surprised to find that we now come down here and in effect the thing we came here to legislate on has already been done by rulemaking of the Federal Trade Commission.

I would like to ask a few questions. On page 1 of this report, you point out that you conducted proceedings relative to rules for the prevention of unfair and deceptive acts or practices in the sale of cigarettes and then interested parties were thereafter afforded the opportunity to participate in the proceedings through submission of written data.

Is there any record of the interested parties' statement before the Commission that is available to us?

Mr. DIXON. It is a public record, sir.

Mr. NELSEN. And two, I would like to point out that in your statement of January 18, released by the Federal Trade Commission, you state there that this action may result in requiring the cigarette industry to disclose the dangers to health risked by smokers. It says this may result. Then in the second paragraph of your report it states that it is an unfair or deceptive act or practice within the meaning of section 5 to fail to disclose clearly and prominently in all advertising on every pack, box, carton, or other container in which cigarettes are sold to the consuming public that cigarette smoking is dangerous to health and may cause death from cancer and other diseases.

The first statement said it "may" result. The second statement, as I read it, is a positive mandate by rulemaking that required information must be on the package, is that not true?

Mr. DIXON. That is right. One was an announcement of a projected hearing. The hearing has now been held, closed, and there is a public record. Based upon that record, a review of that record, this Commission has made its determination and issued this rule. One was the announcement that we may do this after the hearing and studied the record and now we have held it and we have done it. This was notice.

Mr. NELSEN. You earlier made reference to interstate commerce. You referred to advertising. You included the billboards. A billboard certainly could not be considered to be interstate commerce.

Mr. DIXON. The product advertised is in interstate commerce.

Mr. NELSEN. I would like to make a comment, Mr. Dixon. I think members of this committee and many other Members who are not members of this committee are a little bit fearful of a continued extension of powers to administrative bodies, such as the Federal Trade Commission, or the Federal Communications, or Justice. At this time I can think of any number of business firms in my State that have indictments hanging over their heads on violation of antitrust, which seems never to be resolved. We can distinctly recall the Federal Communications Commission getting involved in some very, very questionable rulemaking.

I think you have been before this committee on cease-and-desist legislation and found the same reluctance on the part of the Members of Congress to extend to any agency in effect lawmaking power through rulemaking.

I would like to pursue the question that was asked this morning which aroused my curiosity. It was pointed out something about investigating income tax returns. I have here a statement that Chairman Paul Rand Dixon admitted recently that the Federal Trade Commission had gone over supposed confidential tax returns of business firms.

Senator Magnuson expressed surprise and shock. Gordon Allott said, "Frankly, what those returns contain is none of your business." This was addressed to you. You also mentioned earlier that these papers were made under Executive order. I do not know what the committee was talking about over there, but was there an Executive order that gave you the authority to go into confidential tax returns as reported in this statement?

Mr. DIXON. There was, sir. May I explain to you what that was about?

Mr. NELSEN. Yes.

Mr. DIXON. About 1940, the Federal Trade Commission began, upon its own motion, as I recall, to issue what was called financial reports upon the principal mining and industrial corporations of America for the use of the business community and responsible governmental agencies and authorities.

During World War II this function was taken over by some of the emergency agencies but about 1947 by Executive order of President Truman returned to the Federal Trade Commission.

By subsequent Executive orders of President Truman and Eisenhower—after President Truman had assigned it to the Commission, then President Eisenhower issued additional Executive orders prescribing the manner and method and means by which the Federal Trade Commission could go to the Internal Revenue Service to get information.

Now, in order to make a survey one must determine names in order to establish a probability schedule. So here was the direction from the President, and I might say to you this type of information is widely used to see how the country is moving, how profits are accruing to corporations, how the gross national product may be growing.

This is a service that the Federal Trade Commission could perform and was asked to perform. There are some 10,000 businesses or sources that regularly subscribe for this information that comes out quarterly. The Federal Trade Commission makes literally no use of it because the Congress gave the Federal Trade Commission the right through section 6(b) to call for special reports. This was a carryover of the old Bureau of Corporation's authority which was in the Commerce Department when the Commission was created in 1914.

Knowing this to be vested here then this Federal Trade Commission was called upon to perform this service. When President Eisenhower came into office this job by Executive order was shared with the Securities and Exchange Commission, to whom those corporations regularly make such reports. There is no difficulty to determine their profits or losses or who they are. It is the nonregistered corporations that we are talking about.

If you want to know what is happening in America you must have some access to this group of businesses. There are some 170,000—I might not be far off—of nonregistered corporations. In order to determine who they are, and to get this schedule, apparently the easiest and most sensible method was to go to the Internal Revenue to get these names. So Executive orders granted us authority to get these names.

In the past, we would make the request and designate the parties that could go there and be given this information. Presently, because of the decentralization, we do not send anyone there. The Internal Revenue Department furnishes it to us.

From these 100 some odd thousand nonregistered corporations we choose about 8,500 of them every year in order to make a proper survey. From this survey of these some 8,500, plus the registered corporations is where the quarterly financial report is coming from. It is probably one of the most widely used documents by business and by Congress or certain committees of Congress, and I would think by the planners that are advising the President and the business community at large.

When this subject came up, we were talking about a prohibition in our current appropriation that for another reason it was contended this year that said "you can have your money but you can't send out an economic questionnaire." I was pointing out to them that if this was contained in that language without pinpointing what it was pointed to, it would interfere with this service that the Commission was performing.

Then the question came, just what is this service about and how do you do it? One of my division heads down there began to describe it. When he got to this point is when this question came. I said to him when they got through, "Sir," and I will say it to you, that "if the Congress does not want this service for business, if it does not serve the Congress, then you abolish it, because I will close my shop up. All I get out of it is misery anyway."

Mr. NELSEN. You referred to my printer. Of course, you are referring to the printer of the Commission, are you not?

Mr. DIXON. Yes, sir; we have a printshop that prints briefs and statements. We can't do it as pretty as the Government Printing Office but it is serviceable.

Mr. NELSEN. Thank you. I have no more questions.

The CHAIRMAN (presiding). Mr. Van Deerlin?

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. Dixon, surveys within and outside the industry seem to show that after suffering a slight decline, or perhaps a marked decline immediately following the issuance of the Surgeon General's report last January, that sales of cigarettes have returned to about where they were. Does this report tally with your findings in the Commission?

Mr. DIXON. I am aware of this information; yes, sir. I followed that.

Mr. VAN DEERLIN. Is it presumably correct?

Mr. DIXON. I would assume it is correct because they are public figures released by various reliable sources. Principally tax sources.

Mr. VAN DEERLIN. I was wondering whether you feel if the rules which are promulgated today and suggested for putting into effect next year will have any influence in discouraging smoking that the issuance of the Surgeon General's report failed to have, with all the publicity attendant on that point?

Mr. DIXON. This is a point discussed. This is one of the points that was raised in the hearings. Hasn't there been enough publicity about this? Why do you feel it is necessary to insist on this as a continuing thing? You are now coming to the question of remedy. We have approached the remedy from two sources: One, 6 months from now put it on the box or the label or the carton or the package; a year from now in the advertising unless by March of the next year you come down and file a motion to us and show us why that second step may not be necessary.

I am hopeful, sir, that it won't be necessary. I am hopeful that the industry does just what they say they are going to do. They are going to voluntarily do a lot of cleaning up themselves I am very hopeful that there is a fine education program that goes out across the land. I am very hopeful that the second step may not be necessary.

Mr. VAN DEERLIN. We had here yesterday, as you know, the confession by my young colleague from Pennsylvania that he took up this habit only after the issuance of the Surgeon General's report.

Mr. DIXON. He is very brave.

Mr. VAN DEERLIN. Might it be your feeling that this requirement of labeling of cigarettes and of the disclaimer in advertising or whatever the warning in advertising copy may be, that this might have an influence in dissuading young people from taking up cigarette smoking rather than really expecting that present inveterate smokers are going to kick the habit?

Mr. DIXON. It may be possible one of the results of it, sir, will be that. It is all predicated upon the belief that the buyer is entitled not to be deceived of the truth, but to be told the truth and then to make the choice. I believe in making your own choice. Choose your own weapons or poison or whatever you want to do.

Mr. VAN DEERLIN. The Commission order which was released shortly before lunchtime, I notice, devotes 70 pages to cigarette advertising. In brief, it goes into a number of the themes that have been developed in advertising by the various brands in recent years.

Is it your feeling that the attention which is now being given the industry by the FTC may result in some of these advertising themes being abolished by fiat?

Mr. DIXON. The second and third phase of our proposed rules, as we cite in here, we were at this time doing nothing about them, because the industry itself has made an announcement that they are going to set up an association and they are going to do something about this themselves. There is nobody that believes any more in voluntary compliance than I and my fellow Commissioners. We are very hopeful of this. Because this is where the best law enforcement comes from in America—from voluntary law compliance. That is one way to put it. Whatever causes this change, or wherever it comes from, this is good. But nothing has been mentioned by the industry at all about the need for a warning and we issued a rule.

I would say to you, if the industry had said, "We are voluntarily going to adopt a warning on the package," if they made that announcement, I would not be standing here today with a rule. We would be waiting to see if it was necessary to do anything else.

Mr. KORNEGAY. Would the gentleman yield at that point?

Mr. VAN DEERLIN. Yes.

Mr. KORNEGAY. Mr. Chairman, did the Commission take into consideration the cigarette advertising code that was promulgated by the cigarette industry?

Mr. DIXON. We were aware of it, sir; it was served upon us. It was not put in the record by the industry. It is not a part of this record.

Mr. KORNEGAY. I take it you took no official notice of it.

Mr. DIXON. No, sir.

Mr. KORNEGAY. Are you familiar with the contents of it?

Mr. DIXON. Roughly speaking, sir.

Mr. KORNEGAY. Are you familiar with the section in there on advertising?

Mr. DIXON. Roughly speaking, I can familiarize myself very quickly with it.

Mr. KORNEGAY. That is all right; I assume you have read it.

Mr. DIXON. I have read it.

Mr. KORNEGAY. After reading it, do you not feel it would probably do a far more effective job of discouraging smoking, particularly among the young people, than merely stamping anything you so desire on a pack of cigarettes?

Mr. DIXON. This will help, sir; this will help.

Mr. KORNEGAY. I am asking you if you do not think, from a practical standpoint, it would not be far more effective?

Mr. DIXON. You are saying if they completely rechange their image of advertising that it will be more effective than putting a warning upon the label or in the advertising?

Mr. KORNEGAY. Yes, sir.

Mr. DIXON. I think it will be helpful, sir. The industry has not said they are going to put the warning on there and as yet they have not changed this image. I am very hopeful. We reviewed the history of advertising and the practice in here for that purpose.

Mr. KORNEGAY. Let me read section 2 here. It is very short:

No cigarette advertising which makes a representation with respect to health shall be used unless (*a*) the Administrator (of the code) shall have determined that such representation is significant in terms of health and is based on adequate, relevant, and valid scientific data; or (*b*) if the Administrator shall have determined it to be appropriate, a disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator—

Of course, the code goes on to set out the prohibitions about advertising on college campuses, with athletes, with sports people, with merchandising, or giving away cigarettes in schools and on college campuses, and all that sort of thing.

Frankly, from a practical standpoint, is that not a far better approach to this problem than the actual labeling of cigarettes with your warning or the advertising with your warning?

Mr. DIXON. I think not, sir. I think it will help. It is fine that they are doing it. Had they done this, we would probably have considered very seriously our proposed rules 2 and 3.

Mr. KORNAGAY. Mr. Commissioner, as a practical matter, do you not know that it your rules with reference to advertising are carried out and enforced that it will completely stop any commercial advertising of cigarette companies?

Mr. DIXON. No, sir. I am very hopeful that is not necessary. I am very hopeful that the warning upon the label and such educational programs and such change as will come in the advertising will precipitate the application to us that it will not be necessary.

I am hopeful of that, sir. That is what we have said to you in the promulgation of this rule.

Mr. KORNEGAY. You said if they advertise they are going to have to put some sort of language in there to the effect that cigarettes are dangerous to your health and cause cancer and will kill you.

Mr. DIXON. When I came to paragraphs 5 and 6 of the trade regulation rule, the first page in here, Roman numeral II, I asked that particular attention be noted of this statement:

Except with respect to advertising, the rule shall become effective on January 1, 1965.

Paragraph 6:

With respect to advertising, this rule shall become effective on July 1, 1965: *Provided, however*, That the Commission will entertain an application filed prior to May 1, 1965, by any interested party to postpone the effective date or otherwise suspend, modify, or abrogate the provisions of the rule as to advertising, upon a showing of such change in circumstances as to justify such requested action in the public interest.

An open invitation is made here for us not to make that July 1, 1965, part of that rule effective if there are changes in circumstances. Now much has been said about a proposed educational program by the Government of the United States. Much has been said in our proceeding about the necessity for warning upon the label. Much is yet to

be said, I assume, by the American Medical Association on this problem.

I am hopeful they will say it today or tomorrow because they have not been very helpful right up to now. I will say that, sir.

Mr. KORNEGAY. In other words, there has not been enough research done?

Mr. DIXON. I do not know what they have said, sir. I can't tell.

Mr. KORNEGAY. I am speaking of them generally.

Mr. DIXON. Because there are all kinds of groups in the American Medical Association that have had pronouncements on this subject but from the national body we have nothing official yet that I know of.

Mr. KORNEGAY. In other words, you will take into consideration the advertising code in the event someone files a petition prior to May?

Mr. DIXON. That is right.

Mr. KORNEGAY. Any later scientific information?

Mr. DIXON. Yes, sir.

Mr. KORNEGAY. Educational program?

Mr. DIXON. Yes, sir.

Mr. YOUNGER. If the gentleman will yield just for one question.

What would you consider, Mr. Chairman, a change in circumstances?

Mr. DIXON. I could imagine, sir, that when you make a determination such as we have made by the issuance of this rule one must determine that there is a need, that the public needs to be informed about this danger. To what extent? We have taken many actions in the past where we thought the remedy was enough to put it upon the product or upon the label. In others we have insisted that it be both upon the label or in the advertising.

Here initially we have said on the label and the advertising but with respect to advertising, if you will come and file with us by next May a petition and you show us these changes, we will entertain them even to the point of removing this requirement in the advertising. What would I consider some of these changes?

Mr. YOUNGER. That is right.

Mr. DIXON. I would think what educational program that is carried out in this field will be quite important in this consideration. I think to what extent the American Medical Association as a whole has done on this subject will be quite important on this problem. What the American Cancer Society does. What the chest surgeons do, for instance. How much of a program is mounted to inform would have considerable bearing on that. Plus it being required upon the package which shall forever be there, shall it be necessary to repeat it every time an ad goes out saying, "Smoke X brand cigarettes" and in the next breath says, "Warning, however," and so and so.

It may rely entirely also on the advertising program that is mounted.

Mr. YOUNGER. I would gather that what you meant there was the changed circumstances of the advertising, not what the Surgeon General did or the medical association did.

Mr. DIXON. Education is important as well as advertising.

Mr. YOUNGER. That is all.

Mr. VAN DEERLIN. I can see, Mr. Dixon, where you would want to get at advertising which represents a professional football player as saying that his game was improved as the result of smoking.

Mr. DIXON. Not saying that but the inference could be determined from it.

Mr. VAN DEERLIN. What about more borderline types, such as the representation of young couples in a springtime lane by a brook and the suggestion that each is more sexually attractive to the other as the result of assiduous smoking?

Mr. DIXON. We took notice of that, sir. I am hopeful based upon what they have said voluntarily that they are gong to change some of that. They say they are and let us hope they do. What makes a young person start smoking or what makes an old person stop smoking. Advertising, in my opinion, is quite effective. I am a great believer in advertising. I think advertising is the thing that makes our great industrial society mesh and go. This is the big salesman. It is really important.

Mr. VAN DEERLIN. As a matter of fact, Fatima cigarettes were once the leading brand in America. But they failed to advertise.

Mr. DIXON. This was disclosed to us during our hearings.

Mr. VAN DEERLIN. In regard to the labeling of packages, Mr. Dixon, would you expect to require that the warning be carried on the outside of the package at the point of sale rather than something inside after they have bought the cigarette?

Mr. DIXON. Be on the package, box, and carton.

Mr. VAN DEERLIN. Do you anticipate requiring a standard size of type?

Mr. DIXON. I am quite sure it would have to be conspicuous. We have left this open. If it were clear and prominent, it probably would meet the test. We have invited the industry to come before us before January and work these things out. It does not have to be on there where you could only see it if you took a magnifying glass. It has to be on there for a purpose.

Mr. VAN DEERLIN. As to the warning in broadcasting, this is still in merely the contemplative stage?

Mr. DIXON. That is correct. It is done but the invitation is to come and ask us to delay it or set it aside or change it or modify it in some way if these changed circumstances take place.

Mr. VAN DEERLIN. It is conceivable that there would be no more 10-second station breaks by cigarette advertisers, is it not, if they had to add, within the time slot, a warning?

Mr. DIXON. Always a warning causes considerable difficulty in the broadcast and television media. You perhaps have noticed some television programs where the conversation goes on, the picture comes on, all of a sudden something comes "pfft," and that is supposed to be a warning.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Broyhill?

Mr. BROYHILL. Mr. Dixon, I am interested in the language in the report brought out this morning, on page 123 under No. 3, the next to the last sentence in that paragraph, which answers the question or the statement whether the Commission should cede the problem of regulating cigarette advertising and labeling to the Congress, appears this sentence:

> We are now asked in effect to redelegate to Congress our responsibilities for preventing unfair or deceptive acts or practices in the cigarette industry. We are without the power to do so, in the absence of action by Congress curtailing the Commission's jurisdiction.

Mr. DIXON. We are dealing here, Congressman Broyhill, with points that were raised by various parties that appeared before us during the hearings, as to reasons why the Commission should not proceed in this manner. This is one of the points that was raised. What we are trying to say here is that Congress has commanded by language not only the authority but the responsibility to proceed against an unfair or deceptive practice.

Here was someone standing before us saying, "Wouldn't it be far wiser to take it back to Congress and say, 'You do it'?"

Mr. BROYHILL. You do not feel that Congress should enter into this area at all?

Mr. DIXON. I say that Congress can certainly enter into any area they want to. We are but a creature of the subject. You and the Constitution say the Congress of the United States shall regulate foreign and interstate and commerce. It does not mention any agencies. As time went on and the problem became very complex, to assist the Congress in carrying out this responsibility, various agencies were created.

The second one was the Federal Trade Commission and it was probably given one of the broadest assignments of all agencies, because that simple sentence "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce are hereby declared unlawful" is quite a large command.

Mr. BROYHILL. Mr. Dixon, when did you and the entire Commission make the final decision on this rule?

Mr. DIXON. As I stated in the statement, we made the announcement of this proceeding on January 18, 1962. Then we held hearings and finally we kept the record open an extra month and May 15, 1964, was the final day for anybody to send anything in.

Prior to that time we had been discussing and working on this thing among ourselves. When the record was finally closed and it was all in, we then sat down and deliberated further and we came up with this document and we decided it as of June 22, 1964.

That was the reason when I said in my opening statement that though we had decided, we did not have it finally printed with enough copies to make it public.

Mr. BROYHILL. Then you made the decision after the notice of the hearings on this matter was sent out?

Mr. DIXON. That is correct, sir. I do not know when the notice of the hearings of this committee came, but the notice of hearings of this committee, within the realm of things, as bills are introduced by various Members, that are pertinent to the legislative responsibility of this committee, are automatically sent down into the various departments and agencies of the Government for comment if they pertain to them. Here is the beginning of the notice that we know that Members are interested in this particular problem, and we start answering them.

Mr. BROYHILL. Mr. Chairman, the thing I am getting at is that it appears to me that by your action of taking final action in this area after notice of hearings by this committee came out, you are actually disregarding whatever action we may or may not take in the committee.

I was not surprised that you came up with a rule. I was surprised that you came up with it at this time.

Mr. DIXON. I think what we have done will be very helpful to this committee.

Mr. BROYHILL. I wonder if you feel that if this committee took action that it would go too far or not far enough?

Mr. DIXON. The Congress of the United States is the keeper of the public trust in its greatest extreme. If it is the will of this Congress to enact into law a change of responsibility, a change or a command to stay or do anything, then I will assure you the Federal Trade Commission will obey it.

Mr. BROYHILL. Mr. Chairman, I notice the bells have rung and I have no further questions at this time.

The CHAIRMAN. The committee will be in recess for about 15 minutes.

(Whereupon, a brief recess was taken.)

The CHAIRMAN. Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Dixon, I am one member who feels that it is not unreasonable to think that the Federal Trade Commission or the HEW, or some governmental agency, or Congress, will have the responsibility and the right to exercise its responsibility and authority in the field of trying to protect the public interest.

So I do not question the legality of your organization, though I am no lawyer, but I would think that some governmental agency should be able to express itself in this field. I compliment you on your very forthright, if not aggressive, statements that you have made, because I think some agency ought to express themselves within the power given to them by Congress.

It would seem to me, though, that there is some question about who would do this regulating. You say you do have the authority through FTC to issue these rules and require labeling of the warning such statements as you have shown here in your rule. You say you have that authority without any further law from Congress yet HEW says they do not, as I understand it, unless they would amend the Federal Hazardous Substances Labeling Act. Obviously you think you should control it.

My question to you—and perhaps your own statement has answered the question—do you think the wording in your rules is too strong at this time?

Mr. DIXON. I do not think so, Congressman Pickle, and I will tell you why. I think that we have been most reasonable here. I think our avenue of approach, being prospective rather than retrospective or in any sense punitive. It has a lot of guidance in it. It is a public expression by us, who are appointed and confirmed public officials, with a statutory responsibility to carry out. It is our expression upon this issue. The date of requirement in the rule is prospective. One with respect to the package, January 1, 1965. With respect to advertising, a year from now. As I expressed the hope, because we have invited any interested party to come by May 1965 and file a petition to show us any changed facts or circumstances, that this might persuade us that there has been abrogated any need to have this requirement in advertising at all, sir.

Mr. PICKLE. Would you not admit that some people have smoked cigarettes all their life, lived to be 90 years old, and are healthy as a horse?

Mr. DIXON. It would appear so.

Mr. PICKLE. Very healthy at that stage, would you not say so?

Mr. DIXON. I have no doubt in my eyes. I know people who have smoked a long time.

Mr. PICKLE. There are a lot of questions, it would seem to me, that are still unanswered. Apparently you assume that within the next 6 months to 12 months given this prospective additional time that these answers will be forthcoming. How can you be sure that these answers will be forthcoming?

Mr. DIXON. I will tell you, sir, this principal report upon which we are relying here, the report of the Advisory Committee to the Surgeon General issued January 11, 1964, as I read the report, and I read it very carefully several times, it did not say everyone was going to die. It said 40,000 were going to die.

On page 37 of this report, among other places, some flat conclusions were reached. For instance, on page 37 with respect to lung cancer, this statement is contained:

> Cigarette smoking is causally related to lung cancer in man. The magnitude of the effect of cigarette smoking far outweighs all other factors. The data for women though less extensive, point in the same direction.

And so forth.

This is a flat finding of the greatest group of scientists on this subject that were ever brought together, sir.

Mr. PICKLE. Then you take that as your bible and as your sole source of making this decision of issuing the rule at this time?

Mr. DIXON. Together with other things that are in our record of our rulemaking.

Mr. PICKLE. It would seem to me that in the absence of a clear statement, we will say, from the American Medical Association, which you mentioned yourself previously, that there are still considerable answers to be found on this subject. My main concern would be that we not move too hastily. I repeat again I do not think it is improper for some governmental agency, or Congress, to direct that this regulation be established.

I am not so sure until some other questions are answered that we ought not to relax these rules for a reasonable time. I would say we ought to find language somewhere in between that which is not too scary and that which reasonable men would say should be a label. Surely I think you would agree with that general feeling. You obviously feel this is not too strong.

In my opinion it is too strong at this point and perhaps could be relaxed. I am sure we could probably differ on that. This other question: Do you think it ought to be controlled by the Federal Trade Commission or the HEW through the Federal Hazardous Substances Labeling Act?

Mr. DIXON. This is a decision for the Congress.

Mr. PICKLE. In the absence of the Congress saying anything, you say it is your (FTC) responsibility?

Mr. DIXON. It is right now, sir. It is and has been. There is no way for us to escape it.

Mr. PICKLE. Then you say if the Congress expresses itself you will take yourself out of the ball game because it causes you nothing but trouble now. Suppose the Congress were to pass a law or make a clear

statement on this and we would give this authority to the HEW by amending the Federal Hazardous Substances Labeling Act, would that take you out of that regulation?

Mr. DIXON. I would say to you, sir, if you do it by stated design and purpose we are out of it because you have commanded us to get out.

Mr. PICKLE. If we do not mention anything about the Federal Trade Commission but give to HEW?

Mr. DIXON. You have not taken us out. You have created a dual responsibility which Congress has done many times.

Mr. PICKLE. So you would take yourself out of the ball game but not if we would give this right to somebody else, but if we would specifically take you out?

Mr. DIXON. That is correct, sir.

Mr. PICKLE. To carry it a step further, suppose we decided to the FTC we would give you this power and say you were to regulate it. Would you venture a guess that HEW would say, "We will take ourselves out of the consideration?"

Mr. DIXON. I do not think there is any way to take HEW out because what we have done is predicated primarily upon, one, the responsibilities of one of the agencies of the HEW through the Office of the Surgeon General of the United States. Here, he upon various requests, called together this Committee of experts, let us call them. If you search the world you might not find better experts than were serving on this Committee, eminently qualified. They unanimously issued this report. That would have to be done in any kind of a proceeding for anyone or any agency you create to give a regulatory responsibility beyond that point. That step would have to be taken. This is our authority. I am not a scientist.

Mr. PICKLE. Admittedly, a great deal of credence would be given to this report made by this panel of outstanding authorities. This does not necessarily follow that the Congress must lay down and play dead when this comes out. You would agree to that?

Mr. DIXON. You could pass a law and say you do not believe a word in this.

Mr. PICKLE. Let me pursue that question a step further, Mr. Chairman. Do you think that each State as a practical matter could issue regulatory statements or laws that would provide for proper labeling of smoking of cigarettes within that particular State and take the Federal Government out and let each State regulate?

Mr. DIXON. I think that it would create about as much chaos as you could anticipate because any article that moves as freely as cigarettes do in interstate commerce, it would be most confusing for each State and locality to try to determine what must be said in advertising and what in labeling. But there is another point.

In the marketing of cigarettes and who they must be sold to and under what conditions, you are coming down into the police power of each State.

Mr. PICKLE. I rather agree with you that it would be difficult for each State to do it. I would be hopeful that they could; but practically speaking, they probably could not.

Mr. DIXON. Looking at the problem you would give to a given cigarette company, one of the big eight or nine; they would have to have a different package and a different script for every State. Re-

member when you talk on a radio it is not a respecter of a State line. It goes shooting across the line. So does a television picture and so do newspapers and so do magazines. There would be no doubt of the responsibility in the Federal Government. How far that responsibility should go or how you could possibly deprive a State or locality of its responsibility I do not know, sir.

Mr. PICKLE. I conclude by simply saying that I appreciate your frank statements. I do not think it is unreasonable to think that perhaps there ought to be some expression by the Congress to some agency to properly label a product of this kind. I still think a great deal of question needs to be answered and perhaps we might be moving a little too fast on the timetable you scheduled.

I would not venture what agency would do it. I think perhaps the rules ought to be relaxed and more time given to get further answers to this thing.

That is all, Mr. Chairman; thank you.

The CHAIRMAN. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Mr. Commissioner, you stated that it was a decision for the Congress, did you not, sir?

Mr. DIXON. All decisions are for the Congress.

Mr. WATSON. I mean this particular problem, sir. Let us get down to specifics.

Mr. DIXON. What problem are you talking about now, sir?

Mr. WATSON. I thought we had been discussing the problem of labeling tobacco products.

Mr. DIXON. I have said to you as frankly as I could, Congressman, that I thought it was quite clear to everyone that the Federal Trade Commission not only had the statutory authority but the responsibility to move in this field.

Mr. WATSON. Do you not agree that it is a decision for the Congress to decide jurisdiction as between the Federal Trade Commission and the Department of Health, Education, and Welfare?

Mr. DIXON. This is correct. I thought it was already decided in the passage of these acts and various definitions in the past. You can change them is what I meant, sir.

Mr. WATSON. In other words, you disagree with the statement of the Surgeon General, the man who is author of your bible, that the matter of labeling could best be handled by his Department?

Mr. DIXON. I do not necessarily disagree with him. I said to you in my statement that we have the authority and the responsibility to exercise it presently in the field of cigarette advertising.

Mr. WATSON. Actually, Mr. Commissioner, this whole problem came up to your mind, not as a result of any unfair or deceptive advertising. Rather, your rule was precipitated primarily by the report of the Surgeon General on which you relied so much. Is that not a fair statement?

Mr. DIXON. No, sir; because if you notice our announced rule had several sections in it. In the rule which we have issued we have not issued any rule in the second and third categories with respect to current advertising as to anything outside of the realm of health hazards. We have recited in this report why, because we are very hopeful that the voluntary changes that the industry announced they are going to take, will be taken.

Mr. WATSON. As a practical matter, do you believe or do you not believe that the Department of Health, Education, and Welfare, as of this moment, without any additional legislation, has the authority to label or require this additional label on cigarettes?

Mr. DIXON. Their statement said they did not, sir.

Mr. WATSON. You do not believe that they have that authority?

Mr. DIXON. They said they did not believe it, and I agree.

Mr. WATSON. The Surgeon General recommended that it could be, in his words, more effectively dealt with by appropriate amendments to the Federal Hazardous Substances Labeling Act. You disagree with that?

Mr. DIXON. That is his recommendation, and it is one for you to consider. I know Dr. Terry and I know and respect him highly. This is his recommendation. I have no doubt that if the Congress were to pass such a law, they could competently carry it out.

Mr. WATSON. And notwithstanding the Surgeon General's recommendation, the man who had made this report, you went ahead and did not wait until the Congress had acted upon the recommendation of the Surgeon General.

Mr. DIXON. You can say that. We certainly did. We carried out our authority. Our authority is plain and it has been here for 50 years. We have been in this same area. We have quite a bit of expertise in it.

Mr. WATSON. Yes, but I think earlier the questioning by my colleague, Mr. Kornegay, revealed that there was rather a dearth of activity in this particular field until the advent of the Surgeon General's report.

Mr. DIXON. I recited a case of P. Lorillard in 1951. This industry has had some guides for this period of time. The Commission has had quite a bit of activity in this field.

Mr. WATSON. If we implement your rule which was issued today, it is going to discourage the manufacturers of tobacco products from attempting to make this product, cigarettes, safer for the American public.

Mr. DIXON. I would think just the opposite. I would think they would strive far more to make it safe. Paragraph 4, page 2, turn to that page. It says:

> In the event that any person subject to this rule is of the opinion that new or changed conditions of fact or law, the public interest, or special circumstances require that the rule be suspended, modified, waived or repealed as to him, or otherwise altered or amended, such person may file with the Secretary of the Commission a petition to reopen this rulemaking proceeding, stating the changes desired and the grounds therefor.

And so forth.

That is in here, sir, for the sole purpose of providing an avenue and a quick avenue for relaxation or change of this rule.

Mr. WATSON. Mr. Commissioner, that is not really an effective avenue, because back on page 102—and I certainly have not had ample time to read your report—you point out specifically that if a manufacturer has created some new filter or the like to make his cigarettes safer, he is not to be permitted to advertise that his brand is less harmful for smoking than other brands. In other words, you give him the privilege of saying that it might be less harmful, however, he must always add: "But still it will kill you." Is that the net effect?

Mr. DIXON. Until the finding of this committee is overcome, sir, until by competent medical and statistical evidence to prove that this can be done, then the rule, in my opinion, should not be relaxed.

Mr. WATSON. So we get back to the basic proposition on which you hedged a moment ago—or at least I so interpreted it—that actually your action is based on the Surgeon General's health report rather than on any unfair or deceptive advertising, which is your particular sphere of responsibility.

Mr. DIXON. So far, sir, as with respect to the health aspect of this problem, we are relying principally upon this report of the Surgeon General. With respect to advertising, no, sir.

Mr. WATSON. Do you think it is the primary responsibility of the Federal Trade Commission to deal with matters of health, rather than the Health, Education, and Welfare Department?

Mr. DIXON. It is our problem after the Department of Health, Education, and Welfare lays down these standards. It is our responsibility to see that no one can engage in deception and unfair practice. We go beyond to the next step.

Mr. WATSON. Has the Department of Health, Education, and Welfare laid down such standards?

Mr. DIXON. In this report they are as cold as anyone can lay them. You say "standards." They have made conclusions of fact.

Mr. WATSON. You admitted that the American Medical Association has not made a statement on this particular matter.

Mr. DIXON. They made none to us, sir.

Mr. WATSON. You mentioned earlier in a colloquy with my distinguished senior member that you were concerned about the advertising of the football hero, Crazy Legs Hirsch, in the coliseum out in California. I believe you said it might influence the younger generation into believing that perhaps the cigarette made him the athlete that he was.

If that be a motivating factor for your issuance of this rule, were you not equally concerned about the advertisements I see alongside a whisky bottle, "for the men of distinction," or "for the discriminating diner," or such as that? You have no concern as to what influence those representations might have on the younger generation?

Mr. DIXON. I have concern with that, sir, but I said to you principally that Congress has assigned this responsibility to the Treasury Department.

Mr. WATSON. Yes, sir; but so far as trade is concerned, it is your responsibility.

Mr. DIXON. They have the responsibility to lay down these standards and practices of approval of what the liquor industry can engage in.

Mr. WATSON. Mr. Commissioner, actually, in your rules, you do not indict tobacco per se. You indict the paper that encloses the tobacco; do you not, sir?

Mr. DIXON. I would not say that. We indict, if you call it indict—we made a finding about cigarettes.

Mr. WATSON. By cigarette you mean any roll of tobacco wrapped in paper, or otherwise commonly considered a cigarette?

Mr. DIXON. That is correct.

Mr. WATSON. Does your ruling apply to cigars?

Mr. DIXON. No, sir.

Mr. WATSON. Is not the principal part of a cigar tobacco?

Mr. DIXON. Yes, sir.

Mr. WATSON. But yet your rule would not apply to tobacco?

Mr. DIXON. This report made no finding on cigars.

Mr. WATSON. They contain tobacco.

Mr. DIXON. Absolutely, sir.

Mr. WATSON. What about the old Prince Albert or King George or the other roll-your-own types?

Mr. DIXON. Bull Durham, Golden Grain.

Mr. WATSON. Would your rule apply to that?

Mr. DIXON. No, sir; it would not.

Mr. WATSON. So actually, according to your rule here, primarily the indictment is against those forms of tobacco that are rolled in paper.

Mr. DIXON. That are known as cigarettes as defined; yes, sir.

Mr. WATSON. Let me ask you one final question: You said earlier and I am sure you made the statement in good faith, "It is a decision for the Congress." In view of the Surgeon General's testimony in which he indicated he thought more effective labeling of cigarette packages could be handled under the Federal Hazardous Substances Labeling Act under the Department of Health, Education, and Welfare, would you not be willing to hold your rule in abeyance until such time as this committee, and then ultimately the Congress, could reconcile the differences and try to keep faith with the man who has the direct responsibility for the health of the American people?

Mr. DIXON. We want to be at the command of the Congress.

Mr. WATSON. Would you be willing to withhold your order until such time as a definite command of Congress would be issued?

Mr. DIXON. If the command of Congress comes, then you have changed the law, sir.

Mr. WATSON. But would you not believe in the Congress strongly enough to withhold your order until such time as the Congress would act?

Mr. DIXON. You can't relieve me of my responsibilities so easily, sir.

Mr. WATSON. Certainly the Surgeon General has a responsibility in this. I am frankly concerned over the fact that steps were not taken by your department until such time as this Surgeon General's report was made. Frankly, I fear that we might be getting into the matter of a 1964 version of prohibition. I fear that we cannot set forth standards for the morals of the American people, although I am as concerned as you are about their health. At the same time, I should like for Congress to express its will, rather than having the problem further aggravated by an order of your Commission.

Mr. DIXON. I appreciate your view, sir.

Mr. WATSON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Dixon, I, too, am concerned and feel that something must be done in this field. I am not sure that the action taken to date is what I would necessarily agree with, mainly because I have felt in my opinion, and I am not set in my views on this after hearing you testify. It has been my feeling that basically HEW had the responsibility for

the health except where you have section 12, where you go into food, drug devices, or cosmetics. As I understand, you are not proceeding under this order under section 12.

Mr. DIXON. That is correct. A cigarette is not a drug. It is not a food. It is not a device. It is not a cosmetic. It is a thing, a product.

Mr. ROGERS of Florida. So you have no authority in this section.

Mr. DIXON. We have the broad authority under section 5, sir.

Mr. ROGERS of Florida. This is perhaps what we should determine, whether you have this or not.

Mr. DIXON. The courts have determined that, sir, in a great number of cases, and I have tried to point that out. As I say to you, you can undetermine it. Congress can.

Mr. ROGERS of Florida. Maybe that is what we wil have to do, one way or another. I don't know. Maybe we will have to undetermine it and see if it goes to HEW. It is your assumption that it does go under section 5. I wondered if you did take into consideration the fact that this Congress has passed, after this act, in 1960, the Federal Hazardous Substances Labeling Act. Was this taken into consideration by the Commission?

Mr. DIXON. We are aware of that act; yes, sir.

Mr. ROGERS of Florida. Do you think this gives you any indication of how the Congress wants hazardous substances labeled?

Mr. DIXON. I think that is so. If the Congress wants to declare the tobacco product a hazard, you can do it.

Mr. ROGERS of Florida. This is exactly what we may want the HEW to do. I don't know.

Mr. DIXON. That is right. If you want to call it a drug, all you have to do is two things: Say that a tobacco product or something that is made from it is a hazard within the meaning of the Hazardous Products Act here; then all of the force of that act will take effect. If you want to call it a drug product, then all of the force of the Food and Drug Act will take effect, plus section 12 through 17 of the Federal Trade Commission Act, which says then we can only deal with advertising.

Mr. ROGERS of Florida. That is right. If you will look at the definition of a hazardous substance, it says, "Any substance or mixture of substances which can cause substantial personal injury or substantial illness during or as a proximate result," and so forth.

I think it pretty clearly states that in a positive manner the Congress wants hazardous materials labeled, and we have given direction for that labeling to HEW. I don't see any such wordage in your act that was passed a number of years ago. I don't see such wordage in section 5. I don't see anything being concerned of a positive nature, but simply of a negative nature. I don't see it is stated in section 12.

Mr. DIXON. Section 5(a)(6) commands us to prevent deception and unfair practices.

Mr. ROGERS of Florida. Where on the package of a cigarette is there any deception in any language?

Mr. DIXON. The failure to disclose the danger.

Mr. ROGERS of Florida. I didn't say negative. I said positive. Where is the deception in advertising?

Mr. DIXON. I can go back again and go through this, sir. I have done it once, but it is in this report. I have been through this once, but I will do it again.

Mr. ROGERS of Florida. I have looked at some of your report and I am talking about the difference between section 12 where it is specifically stated and section 5(a).

Mr. DIXON. Section 12 through 17 was the so-called Wheeler-Lea amendment to the Federal Trade Commission Act which added these sections to the act dealing with food, drugs, devices, cosmetics, in addition thereto, amending section 5, the basic broad act, adding the words "unfair or deceptive acts or practices."

Mr. ROGERS of Florida. And the court ruled that you could not regulate the cigarette industry.

Mr. DIXON. Under the drug section.

Mr. ROGERS of Florida. Under section 12.

Mr. DIXON. We were seeking an injunction here. They said, "This is not a drug."

Mr. ROGERS of Florida. Exactly. So the court has already said "You have no authority under drugs."

Mr. DIXON. No. But that did not deprive us of the responsibility to proceed under section 5.

Mr. ROGERS of Florida. If you were given the authority to require the positive hazardous labeling, I would agree with you. But since that time the Congress has acted in a positive manner, has passed authority where we have instructed the agency concerned with health of the American people to go into this field and to require labeling if it is a hazardous substance. I would think that you would consider cancer a hazardous substance. Would you agree with that?

Mr. DIXON. Cancer as a what, sir?

Mr. ROGERS of Florida. I assume you would agree that cancer was a hazardous substance.

Mr. DIXON. Cancer is a disease. It is not a substance. It is the result of something.

Mr. ROGERS of Florida. Nevertheless, you would consider it hazardous and it should be labeled?

Mr. DIXON. Whatever causes cancer is a hazard. Whatever it is.

Mr. ROGERS of Florida. A cancerous substance, a hazardous substance, you would agree with that?

Mr. DIXON. I would agree that anything that is a substance that causes cancer is hazardous; yes, sir.

Mr. ROGERS of Florida. I am glad, because that is what we considered in the Hazardous Act when we passed it in 1960.

Mr. DIXON. Dr. Terry on page 3 of his statement says that:

> The regulation of labeling of cigarette packages could, the Department believes, be more effectively dealt with by appropriate amendments to the Federal Hazardous Substance Labeling Act, which our Department administered through the Food and Drug Administration—

and so forth. He wants an amendment to the law.

Mr. ROGERS of Florida. Simply because we may not have given him full and complete authority in the field doesn't mean we have given it to you. This is the point you are assuming.

Mr. DIXON. What you are talking about is that you are playing the clock back on me.

Mr. ROGERS of Florida. I am playing it forward in 1960.

Mr. DIXON. In 1914 the Federal Trade Commission was created and then as the years went by Congress began to add and give it other

responsibilities. They didn't spell it out. They did it in language that was very broad. They did it on purpose, too, so that we would have to follow the procedures and develop a body of law by inclusion and exclusion. We have done it. One of those bodies of law very clearly is the statutory authority to require affirmative warnings in order to prevent deception. That is very clearly established in the law. One of those is with respect to cigarettes, the *P. Lorillard* case that I pointed out here.

Mr. ROGERS of Florida. I read your reference to P. Lorillard and I don't necessarily come to the same agreement with you. With the action of the Congress in 1960 designating in a specific law which this Congress acted on and gave the specific authority to HEW?

Mr. DIXON. May I point out one thing to you, sir, if you would ask me to be smart enough to know when Congress wanted us to go this way and when that way.

Mr. ROGERS of Florida. I think Congress moves slowly enough.

Mr. DIXON. The Congress passed the Flammable Act. The Flammable Act—the Flammable Fabrics Act. Certain fabrics were burning up little children, it was a hazard. If, for example, they were rayon and it brushed against, if they walked by, a cigarette or match, whoom, they went up and they were dead. You passed a law and sent the law down to the Federal Trade Commission to administer. Not only that, you put an enabling section in the law which said to us to develop rules and regulations, which is a true legislative grant. This was a specific act. It was a hazard and I point it out to you, sir.

Mr. ROGERS of Florida. We gave you specific authority to do that.

Mr. DIXON. That is correct, on that particular product.

Mr. ROGERS of Florida. That is right. We have given specific authority to HEW to require positive labeling of hazardous material. That is exactly the point I am making.

Mr. DIXON. Mr. Larrick I think once wrote back to Senator Neuberger a statement which I am reading here saying that they didn't have that kind of authority. All I can answer for you is this, sir. I know the Federal Trade Commission has the authority. I know that. I know that it has been approved by the courts. Under that authority and that responsibility we have acted, sir. I know that the Congress can duplicate that authority somewhere else.

They can remove it and vest it exclusively somewhere else. This is the will of the Congress. But until the Congress acts I am sworn to enforce the law as it presently is, not what it might be, what some individual Member of Congress might want it to be, but what it is.

Mr. ROGERS of Florida. I can say the same to you. I see the law and the Congress sees the law as it passes, as it declared itself, its intention and not what some individual board member might think it would be or assumes the prerogative to assume it may be. I can say the same to you. But let me ask you this——

Mr. DIXON. I am not saying what I do because what I say, sir, is this. There is nothing we do that is not subject to judicial review. It has been reviewed.

Mr. ROGERS of Florida. This is true of Congress as well.

Mr. DIXON. What has been reviewed has become the body of law. This is where it came from.

Mr. ROGERS of Florida. This has never been ruled on, this particular question we are dealing with now and that is why we are having a hearing.

Mr. DIXON. This question has never been ruled on, whether we could not proceed in the fashion in which we have proceeded?

Mr. ROGERS of Florida. Yes, sir.

Mr. DIXON. This has been ruled on innumerable times. That we have the statutory authority. I will read you a hundred cases, if you are patient enough, sir.

Mr. ROGERS of Florida. I will do that without boring the committee.

Mr. DIXON. I will give you a hundred cases on the point.

Mr. ROGERS of Florida. Under section 5(a)1?

Mr. DIXON. Under section 5(a)1 is the command to the Commission to prevent these practices that are recited.

Mr. ROGERS of Florida. I would like to have all the cases under 5(a)1 that bear specifically on this particular problem of requiring a positive warning of a hazardous substance.

Mr. DIXON. They are all listed in here, page after page of them.

Mr. ROGERS of Florida. When I say they were listed I didn't agree with your interpretation of them. Now let me say that. What actions have you taken where a food product is given to cattle, there is perhaps a residue left in the meat, which is a carcinogen. We had the testimony before this committee by Food and Drug. What actions have you taken to require a warning on such meat?

Mr. DIXON. This is a food product, is it not?

Mr. ROGERS of Florida. Yes.

Mr. DIXON. This is something that specifically falls within sections 12 to 17, admonition of advertising. If we thought it was in the public interest to prevent that in advertising we could have proceeded.

Mr. ROGERS of Florida. Have you done so?

Mr. DIXON. We have not to my knowledge.

Mr. ROGERS of Florida. With this authority why not?

Mr. DIXON. Do you know of any problem that is big enough for us to proceed like this?

Mr. ROGERS of Florida. Yes, we have had this very problem.

Mr. DIXON. It has not been sent down to us. I know of none. You are talking of a labeling of a food product or the overall problem of labeling and advertising?

Mr. ROGERS of Florida. Whatever falls in your jurisdiction.

Mr. DIXON. I know of no specific problem on this.

Mr. ROGERS of Florida. Do you have sufficient staff to get into this field?

Mr. DIXON. We have not sufficient staff but we have a pretty competent staff. We had one big enough to get into this. This is a lot bigger than what you are talking about.

Mr. ROGERS of Florida. Perhaps it will be and that is why the Congress has decided they wanted to go into this problem and that was the main concern that I was somewhat surprised at the Commission, knowing that the Congress was going into this and the date of its hearing, would announce a determination until at least this committee went into the problem, to decide whether they thought it was under your jurisdicion or perhaps decided to give you additional jurisdiction if we thought necessary or perhaps to HEW.

I am somewhat concerned, I do think something needs to be done. I am concerned about the rather precipitous action of the Commission.

Mr. DIXON. I hope what we have done is sound in both judgment and law, sir. If it is I wonder why it makes any difference who does it?

Mr. ROGERS of Florida. I think probably for a number of reasons because if this action is perhaps left unchallenged I don't know where your authority would stop.

Mr. DIXON. I have a feeling, Mr. Congressman—I have been in this field 25 or 26 years—and I have no personal ideas of having been granted any arbitrary authority to tell anyone what to do. I have my command in statutory language as developed by these various cases I have referred to. Each time we act it is subject to judicial review and I assure you that you have put all the safeguards in our act to keep us from being, you might say, precipitous or arbitrary or capricious. Because we have got to be as sound as a dollar or it will not stand up.

Mr. ROGERS of Florida. My concern has been that you base your premise on the major field and findings of another Department.

Mr. DIXON. I hope I have made myself plain to you that we are not the expert that the Surgeon General is.

Mr. ROGERS of Florida. This is what concerns me about your action.

Mr. DIXON. All right, but the question is whether you vest this in Food and Drug for the remedy that must be taken or whether you vest or leave it in Federal Trade.

Mr. ROGERS of Florida. We have already vested it in the Hazardous Substances Act.

Mr. DIXON. The Surgeon General must make the expert opinion. It would make no difference whether Food and Drug proceeded on this report or we did. The point is we would have to proceed from this point. You are just talking about who moved after that. That is what you are talking about.

Mr. ROGERS of Florida. Of course, this is very true. Then it only concerns me that the various departments stay within their jurisdiction. As long as we can get action we want it taken by the right department. This is what I am concerned about, and the experts in the field.

Mr. DIXON. This Congress in 1938 when the debates were had on Wheeler-Lea listened to all kinds of arguments upon the floor of the Congress that a separate choice should be made and that this responsibility of food, drug, devices, and cosmetics once and for all should be settled, place it in one place or the other.

Mr. ROGERS of Florida. And the courts stated you had no right under that section to go against tobacco.

Mr. DIXON. Let me complete my statement. The Congress made the choice with their eyes wide open and vested in a dual responsibility, in the Federal Trade Commission and in the Food and Drug Administration. There was not any HEW then. There was no department then. There were two agencies. Now there is a department.

Mr. ROGERS of Florida. But you are not moving under section 12. You have already stated that.

Mr. DIXON. That is right, sir.

Mr. ROGERS of Florida. We have given the hazardous labeling to Food and Drug. It is not a question of moving under section 12 at all and there is no point of getting into a discussion on that.

Mr. DIXON. I have been trying to be as helpful as I can and I am not here for the purpose of trying to reach out. Listen, I am an intelligent man and would not reach out and be one fifth of a group grabbing a $9 billion problem. Do you think I would be foolish enough to manufacture that kind of a problem? I was sworn to enforce a law, sir, and I don't turn my back on it.

Mr. ROGERS of Florida. I don't say you are turning your back on it at all.

Mr. DIXON. I am not in any contest with HEW. I am in the greatest type of liaison arrangement with them. I have conversed many, many times with Dr. Terry about this problem, with my opposite colleagues in Food and Drug. We must of necessity, in order to give the service to the public that it is entitled to, carry out this type of relationship.

Mr. ROGERS of Florida. May I say I think your actions in many fields have been excellent? But I must say that the liaison if it had been so good, then certainly Food and Drug would have been in a position to recommend action which they have not yet done. Being the experts in the field concerning the health of the American people, their opinions would be important. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Commissioner.

Mr. DIXON. Mr. Chairman, Mr. Younger asked me some figures that have been called to my attention. Before I forget it, if I may read them into the record, I will, sir.

Mr. YOUNGER. Thank you.

Mr. DIXON. I think, with your permission, I will submit this. You asked for the record of the Commission after 1961. I made an estimate but I have a compilation here that was made in answer to some other question that was put to me on the other side of the Congress. It is entitled "Table 4, FTC orders affirmed and reversed on review by courts of appeal and the Supreme Court, fiscal years 1959–63."

It is more extensive than what you asked for but the figures are here and, if it will satisfy you, I will put it in the record, sir. If you want me to point out some of them, I will do it now.

Mr. YOUNGER. No; just give it to the reporter for the record, to be inserted at the point of my earlier question.

I would like to ask one question along the field of inquiry of Mr. Rogers. I am confused, Mr. Commissioner, because most of the cases that you are pointing to in your discussion were had before the Congress passed this last act which is in the 87th Congress. What cases have you since that Mr. Rogers was pointing out?

Mr. DIXON. Wasn't there a Hazardous Substance Act prior to the act you are talking about, Congressman Rogers? Was this an amendment to the then-existing act or is this a brandnew act?

Mr. ROGERS of Florida. This is a brandnew act to regulate the interstate distribution and sale of hazardous substances.

Mr. YOUNGER. That was the 87th Congress, I believe.

Mr. DIXON. Eighty-sixth Congress. It is Public Law 86–713.

Mr. YOUNGER. What cases have you had since then as to the authority that this particular act may have transferred to the HEW? That is not what was given to you in authority, way back somewhere.

Mr. DIXON. I don't know what we have had. We would have to run it down. The passage of this act, without specific reference or command of the Congress, would not remove us from our responsibility also. Let me give you an example.

Mr. YOUNGER. That is enough.

Mr. DIXON. There is a Sherman Act. You know of the Sherman Act. We have a Federal Trade Commission Act.

Mr. YOUNGER. Mr. Commissioner, I only asked one question. The cases you have had since we passed this act.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Chairman, we have kept you here a long time today and I imagine you are rather weary. You have been very helpful to the committee in the making of this record and you have responded to the questions. There has been some argumentative discussion with some of the members of the committee, but I think that is probably indicative of the fact that this is a very sensitive question and highly important. I must say, for my own part, I am somewhat confused over the entire subject matter.

I think that anyone who has assumed the responsibility in the field, and I don't care which direction it comes from, whether it is the Congress or the Surgeon General, HEW, Federal Trade Commission, or Department of Justice, or whoever it might be, involving a problem that affects the health of the country, it is all important.

The fact that you have gone into this and assumed your responsibility conscientiously and sincerely, I think, is a further indication of your efforts to carry out your duties as you have tried so well to explain here today. There are some questions that I don't understand. Maybe some of them won't be answered soon—maybe some of them will never be answered. But it would seem to me, Mr. Chairman, if the report of the committee of experts—the scientific medical experts—on which your action is admittedly based, if that report is true to the extent that, beyond any question, the smoking of cigarettes causes injury and dath to people, and you and your staff and your Commission are convinced that is the fact, you are derelict, I am derelict, this committee is derelict, and the Congress is derelict if we don't provide a law prohibiting the use thereof, except under limitations, such as those applicable to strychnine or any other injurious product that is used by medical experts. I am convinced from thse hearings if there has been developed a body of evidence that is beyond a question, which causes you to take your action, then we all, in the interest of the health of the public, ought to be providing a program that would restrict and prevent the use of it, just as we prevent the use of narcotics or poison substances or such other substances that are injurious to the human body.

I just think that if we are going to face this problem squarely, and we are convinced that is it, that is the only thing, in my judgment, we can do.

Secondly, you do not recommend any legislation. You think there is ample and sufficient power and authority for you to take such action as is proposed in your rule.

You made that very clear. Let me say that I, for one, have great admiration and confidence in your ability and the ability of your Commission and the staff that you have down there. I have observed the

Commission and its operation over the years. But do you not agree with me that it is impossible, under the circumstances, for you to effectuate this rule by January 1, 1965, or any other time in the immediate future because of the court action that is obviously going to result?

Mr. DIXON. I agree with you, under our procedure or under any other procedure or any law that you would pass, you could not precipitate the final answer on this problem until after it has complete court review. Whether the way we are going or whether under a new law, and you start all over again, that would still have to happen.

The CHAIRMAN. If you proceed with this, and a proceeding is started by the industry or anybody, what would be your estimate as to the length of time it would take to resolve the litigation?

Mr. DIXON. If the industry or interested party should seek out the avenue of going to a district court and seeking an injunction to enjoin us from proceeding to put into effect this rule, and, accordingly the review goes up through the circuit and possibly to the Supreme Court, and if the procedure were approved by the Supreme Court, we would still have the possibility that the rule would be violated. If that rule was violated then we would start back toward the final day of cease and desist and perhaps again a review. I would think 4 years, sir.

The CHAIRMAN. In other words, you have to expect your action to be tested in the courts as to whether or not the rule is adopted pursuant to law and within your authority?

Mr. DIXON. I would say that, and I would say the same estimate if you started today to pass a law and you would pass a law and then preempt it to another field and they started over—it would take longer.

The CHAIRMAN. Let us not get too far ahead. Let us get the facts in the record. Let us get to that point after we get this one worked out. After the litigation, as to whether or not your action was proper, is determined, and assuming the court holds that you were within your authority in issuing the rule, then you will have to come back, and, if the industry failed to comply with the rule, you will have to start proceedings to cease and desist; wouldn't you?

Mr. DIXON. That is right.

The CHAIRMAN. Then an action contesting you on the application of the rule could be litigated all the way up to the Supreme Court again?

Mr. DIXON. That is right, sir.

The CHAIRMAN. I would agree with your estimate that it would take at least 4 years and maybe longer. Many of my colleagues seemed to be thoroughly convinced that something should be done in this field. If something could be worked out whereby legislation could be passed that would result in what you are attempting to do, wouldn't that be much better?

Mr. DIXON. Any thing that would bring about a determination of this problem in a shorter period of time would be better, sir; that is obvious.

The CHAIRMAN. I am not saying that is can be done.

Mr. DIXON. I understand, sir.

The CHAIRMAN. I am merely exploring with you if there might not be a better approach to it than going through years of long litigation.

Mr. DIXON. You see the Congress of the United States can make a legislative finding itself based upon all of your study and what you have read and what you have noticed and what you hear and what you have observed, you could make a legislative finding in a bill that cigarette smoking is dangerous per se, and therefore the following law is necessary.

It shall be considered illegal and unless every cigarette has on it, bump, bump, bump, and anybody that doesn't put on it before a certain date shall be finable by so much money and put in jail. That will solve the problem real quick. You can do it. You can cut the period just like that.

The CHAIRMAN. If that could be done, if this problem is so acute, if the health of the people of the country is in such great danger, why wouldn't that be the advisable thing to do?

Mr. DIXON. I would defer to your judgment as to whether you can do that or not. I would have an idea it would be a very difficult undertaking.

The CHAIRMAN. I agree with you.

Mr. DIXON. It could be done.

The CHAIRMAN. I agree it would be very, very difficult to undertake. What worries me is whether or not you have really overstepped your limitations.

The copy of the trade regulation rule which is included on page 1 and 2 of the Commission's publication, together with the separate statement of Commissioner MacIntyre, will be included in the record at this point for the information of the committee and the complete report will be received for the files of the committee for the information of the members of the committee and the Congress. I think it would be a little voluminous to include the entire report in the record.

(The document referred to follows:)

FEDERAL TRADE COMMISSION

WASHINGTON

TRADE REGULATION RULE FOR THE PREVENTION OF UNFAIR OR DECEPTIVE ADVERTISING AND LABELING OF CIGARETTES IN RELATION TO THE HEALTH HAZARDS OF SMOKING

PAR. 1. The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. §§ 41, *et seq.*, and the provisions of Subpart F of the Commission's Procedures and Rules of Practice, 28 F.R. 7083–7084 (July 1963), has conducted a proceeding for the promulgation of a Trade Regulation Rule, or Rules, for the prevention of unfair or deceptive acts or practices in the sale of cigarettes. Notice of this proceeding, including a set of proposed Rules, was published in the Federal Register on January 22, 1964 (29 F.R. 530–532). Interested parties were thereafter afforded an opportunity to participate in the proceeding through the submission of written data, views and argument and to appear and express orally their views as to the proposed Rules and to suggest revisions thereof and amendments and additions thereto. In adopting this Rule, the Commission has given due consideration to all such views, data and argument together with all other relevant matters of fact, law, policy and discretion.

PAR. 2. The Commission, on the basis of the findings made by it in this proceeding, as set forth in the accompanying Statement of Basis and Purpose of Trade Regulation Rule, hereby promulgates as a Trade Regulation Rule its determination that in connection with the sale, offering for sale, or distribution

in commerce (as "commerce" is defined in the Federal Trade Commission Act) of cigarettes it is an unfair or deceptive act or practice within the meaning of Section 5 of the Federal Trade Commission Act (15 U.S.C. §45) to fail to disclose, clearly and prominently, in all advertising and on every pack, box, carton or other container in which cigarettes are sold to the consuming public that cigarette smoking is dangerous to health and may cause death from cancer and other diseases.

PAR. 3. For purposes of this Rule:

(1) "Cigarette" means any roll of tobacco wrapped in paper or otherwise commonly considered a cigarette.

(2) "Advertising" includes all radio and television commercials, newspaper and magazine advertisements, billboards, posters, signs, decals, matchbook advertising, point-of-sale display material, and all other written or other material used for promoting the sale or consumption of cigarettes, but does not include the labeling of packs, boxes, cartons and other containers in which cigarettes are sold to the consuming public.

PAR. 4. In the event that any person subject to this Rule is of the opinion that new or changed conditions of fact or law, the public interest, or special circumstances require that the Rule be suspended, modified, waived, or repealed as to him, or otherwise altered or amended, such person may file with the Secretary of the Commission a petition to reopen this rule-making proceeding, stating the changes desired and the grounds therefor. The Commission will act on the petition as provided in Section 1.66 of the Commission's Procedures and Rules of Practice.

PAR. 5. Except with respect to advertising, this Rule shall become effective on January 1, 1965.

PAR. 6. With respect to advertising, this Rule shall become effective on July 1, 1965; provided, however, that the Commission will entertain an application filed prior to May 1, 1965, by any interested party to postpone the effective date or otherwise suspend, modify, or abrogate the provisions of the Rule as to advertising, upon a showing of such change in circumstances as to justify such requested action in the public interest.

Issued: June 22, 1964.

By the Commission.

JOSEPH W. SHEA, *Secretary.*

SEPARATE STATEMENT BY COMMISSIONER MACINTYRE

I have disagreed with the Commission on the nature of the action and the point of time remedial action should be made effective. It is my view that the Commission's findings and conclusions appropriately are to be considered as an implementation of the findings and conclusions heretofore made in the Report of the Advisory Committee to the Surgeon General on "Smoking and Health" and therefore a part of "Phase I" of the work of the agencies having responsibility in this matter. This "Phase I" is referred to on page 8 of the Report of the Advisory Committee to the Surgeon General on "Smoking and Health." It is my view that undertaking remedial action appropriately may be referred to as a part of "Phase II." This phase of the handling of this problem also is discussed at page 8 of the Report on "Smoking and Health."

No one can deny the importance of "Phase II" or of anything done to implement it. Now that the problem is before us, many are suggesting ways and means for its solution. The vastness and importance of the problem requires that we be fairly correct in our solution before we apply it in all of its details and ramifications. This is a matter about which we cannot afford to make a mistake.

For these reasons, I have suggested to the Commission that instead of the remedial action it is taking, it should serve notice that the Commission considers it to be an unfair or deceptive act or practice within the meaning of section 5 of the Federal Trade Commission Act (15 U.S.C. § 45) to fail to disclose, clearly and prominently, in all advertising and on containers in which cigarettes are sold to the consuming public, an appropriate warning to the effect that cigarette smoking is a health hazard of the nature and to the extent found in the Surgeon General's Advisory Committee Report on "Smoking and Health," January 11, 1964. This would leave the specific wording and other details of such warning to be worked out and evolved as developments unfold. These developments are now in evidence on all sides. Moreover, I would

set the effective date for the full compliance with proper wording and in all detail, as July 1, 1965. This latter feature of my proposal would provide both the Commission and the industry members with opportunity to evolve complete compliance with the law in the most realistic and effective manner required by the public interest.

What the Commission has done through its implementation of "Phase I" and what other agencies have done and are doing in that regard, will provide guidance for all concerned on the proper solution of this problem in the light of the developments from day to day through the period from now until July 1, 1965.

The CHAIRMAN. It would seem to me that the record has to be very clear that beyond a doubt the smoking of cigarettes will cause cancer and other diseases. I do feel that your Commission has the ability to make that record. I think there are various possibilities that this entire matter may have to be settled on the basis of whether or not this report that you depend on is such that it can be absolutely depended upon as a matter of fact and not necessarily taken as the judgment of experts because, as someone said here this morning, "Some people smoke, innumerable people smoke—many until they get to be 90 years old."

I do not know that I ever saw a 90-year-old person smoking but maybe somebody else has. That is sort of like the story of the group that was insisting that the drinking of liquor was injurious to the health and caused the death of people and asked the old man what had contributed to his having lived such a long and enjoyable life of 94 and he said primarily that he took a drink of liquor every day. So you never know about those things. I do not know yet.

Let me compliment you and your staff on your presentation here today and the information which you have given to this committee and to all of the people of the United States. I think it is going to get a lot of attention. I want to thank you for your appearance here and for your testimony.

Mr. DIXON. Thank you very much, sir.

The CHAIRMAN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

I wish to make a brief statement before we conclude for today. It has become evident today that the Federal Trade Commission has grossly exceeded its authority in issuing the trade regulation rule on cigarette advertising and labeling. It has gone too far, too fast, and it is obvious from the testimony we have heard today that the Commission's action is for the purpose of circumventing the Congress.

The "child" today has shown conclusively that it believes itself stronger and more all-knowing than its "parent." It even asked that Congress wait to act until it had made its decision known—decisions it had already formulated. And then it refused to wait to see what action Congress itself would take.

In light of today's disclosures, I believe it is imperative that this committee and the Congress take positive action to check the usurpation of authority by the Federal Trade Commission. The very heart of our Nation's economy—the free enterprise system—is at stake.

I feel this committee must now initiate action to remedy the Trade Regulation Rule disclosed by the Federal Trade Commission today. I feel this committee and the Congress must curb the authority which the Commission contends it had but did not exercise for 48 years.

Mr. Chairman, I believe what we have witnessed today is an expression of a bare and arrogant grab for power by an agency, a grab of a power reserved by the Congress for itself with the public good in mind. No industry in the United States is today safe from the grasping tentacles of Federal agency domination under the authority presently assumed by the Trade Commission.

Mr. Chairman, I strongly oppose this power grab and strongly feel this Congress should now reexert its mandate for the protection and for the good of our free enterprise system.

The CHAIRMAN. Thank you.

The committee will adjourn now until 10 o'clock tomorrow morning.

(Whereupon, at 4:50 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, June 25, 1964.)

CIGARETTE LABELING AND ADVERTISING

THURSDAY, JUNE 25, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris (chairman of the committee) presiding.

The CHAIRMAN. The first witness this morning will be Mr. Bowman Gray, chairman of the board of directors of the R. J. Reynolds Tobacco Co. of Winston-Salem, N.C. As I understand, Mr. Gray, you are testifying on behalf of the industry itself and not for your company.

STATEMENTS OF BOWMAN GRAY, CHAIRMAN OF THE BOARD OF DIRECTORS, R. J. REYNOLDS TOBACCO CO., WINSTON-SALEM, N.C., AND HENRY RAMM, VICE PRESIDENT AND GENERAL COUNSEL

Mr. GRAY. That is right, sir.

The CHAIRMAN. We will be glad to have your testimony.

Mr. GRAY. I appreciate very much the privilege of appearing before this committee. As you know, my name is Bowman Gray and I am chairman of the board of the R. J. Reynolds Tobacco Co., and I am here as a spokesman for the manufacturers of virtually all cigarettes produced in this country.

They have asked that I present to this committee their views with respect to the pending bills. The names of these companies have been furnished to the clerk. They are the American Tobacco Co., Brown & Williamson Tobacco Corp., Larus & Brother Co., Inc., Liggett & Myers Tobacco Co., P. Lorillard Co., Philip Morris, Inc., R. J. Reynolds Tobacco Co., Stephano Brothers, Inc., and United States Tobacco Co.

Over the past 10 years and particularly during the last 5 months, the cigarette industry has been under heavy attack from a number of quarters. Indeed, I believe that this situation is without precedent in the history of American business. These attacks culminated in the report of the Advisory Committee to the Surgeon General on Smoking and Health released on January 11. A week later, the Federal Trade Commission announced a trade regulation rule proceeding relating to cigarette advertising and labeling. Yesterday, in the midst of hearings by this committee, the Federal Trade Commission announced a trade regulation rule.

I have not yet had an opportunity to study the Federal Trade Commission's lengthy report. I understand, however, that the Commission's rule would require that a warning notice be placed on all

cigarette packages and in all cigarette advertising to the effect that cigarette smoking is dangerous to health and may cause death from cancer and other diseases. Our attorneys have advised us that the Commission does not have the authority to issue this trade regulation rule. We opposed the issuance of this rule during the course of the Commission proceedings. We shall oppose it in the courts if necessary. We oppose it because we believe the Commission acted unlawfully. We oppose it because we believe this matter should be resolved by the Congress and not by a Federal agency. We oppose it because we believe, as Chairman Dixon acknowledged, the Commission's rule would not have preemptive effect, and the industry would be exposed to the possibility of diverse State and municipal laws. We oppose it because we believe the Commission's warning requirement is unwise, unwarranted and is not a fair factual statement of the present state of scientific knowledge.

The purpose of this committee's hearings as announced on May 29 is to consider bills which in one way or another would regulate cigarette labeling and advertising. Needless to say, I cannot discuss all of these bills in detail, but I shall comment upon common issues raised by them.

Let me summarize at the outset—very briefly—the premises which govern what I shall say.

First, the tobacco industry is profoundly conscious of the gravity of questions concerning smoking and health.

At the beginning of 1954, most of the cigarette manufacturers as well as a number of organizations representing growers of leaf tobacco formed the Tobacco Industry Research Committee—now named the Council for Tobacco Research—U.S.A.—to finance research in matters relating to tobacco and health. Through its scientific advisory board, comprised of eminent and independent medical scientists, grants for research have been made totaling some $7 million. In addition companies individually have given substantial support to other research in the area of smoking and health.

In January of this year, the six principal cigarette manufacturers pledged $10 million to the American Medical Association Education and Research Foundation for research into the possible relationship between smoking and health.

I am neither a doctor nor a scientist, and I am, therefore, not qualified to participate in a debate on the medical or scientific questions relating to tobacco and health. I believe, however, that nearly everyone familiar with these difficult problems would agree that there are large and basic areas where there is lack of knowledge, uncertainty, and where a great deal more research is essential before definitive answers can be made. Many distinguished scientists are of the opinion that it has not been established that smoking causes disease. I understand some of them are to appear before this committee and will express opinions at variance with the conclusions of the Advisory Committee report.

Second, we do not believe that any governmental action is necessary at the present time with respect to cigarette advertising or labeling. We certainly do not think that any action should be taken by an administrative agency such as was taken yesterday by the Federal Trade Commission, and if any such action is to be taken, we believe it should

be taken by the Congress and by no one else. The problem is national in scope; it is clearly not local. Cigarettes are advertised to a large extent on national media—over network television and network radio, and in magazines which circulate throughout the country. Cigarettes are sold in every State of the Union. State or municipal legislation would produce chaos. I am informed that the Chairman of the Federal Trade Commission conceded here yesterday that the announced trade regulation rule would not eliminate the possibility of such chaos.

Moreover a great diversity of interests is involved. Any legislation or regulation affecting cigarette advertising or labeling has far-reaching repercussions for farmers and growers, other suppliers, processors, distributors and retail merchants, as well as the cigarette manufacturers. The tax revenues of the Federal Government and practically all of the States are seriously affected. Any such legislation or regulation has important implications for the country's mass media. It is wholly inappropriate for a decision of this magnitude to be made by the Federal Trade Commission, by any other Federal administrative agency, by any State, by any county, or by any city. I repeat that any action should be taken by the Congress and by no one else.

Third, I think it is important to bear in mind that the majority of men and women in this country are cigarette smokers. Millions of persons throughout the world derive pleasure and enjoyment from smoking—and have done so for centuries.

The Advisory Committee to the Surgeon General recognized that there are "significant beneficial effects of smoking primarily in the area of mental health," but the Advisory Committee felt that since it could not measure these benefits, it could not weigh them in the balance. I think it is obvious, however, that no action should be taken with respect to smoking without giving just and appropriate weight to the beneficial effects of smoking.

Fourth, it is unnecessary for me to so dwell at length before this committee upon the importance of the tobacco industry to the whole nation's economy. The tobacco business is this country's oldest industry, and millions of persons depend directly or indirectly upon tobacco for their livelihood. In 1963, some 500,000 farms—some 700,000 farm families—produced tobacco which had a cash value of over $1.3 billion. Exports of leaf tobacco and tobacco products totaled more than $522 million in 1963. The importance of tobacco to our foreign commerce and to our balance of trade has been pointed out frequently. Federal, State, and local taxes on cigarettes amounted to approximately $3.2 billion in fiscal 1963. The tobacco industry is clearly a vital sector in this country's economy.

My point is simply that all these factors point unmistakably to this conclusion: Great care should be exercised before any action is taken which could seriously disrupt this important industry. Unwise legislation or regulation, like the trade regulation rule announced by the Federal Trade Commission, has repercussions which will be felt throughout the country's economy.

We do not think that a caution notice is necessary on labels or in advertising. I assume that the principal purpose of a caution notice is to alert the consumer to possible hazards associated with the use of a product. With respect to cigarettes, however, the public has been

inundated for more than a decade with charges that smoking may be injurious to health. The report of the Advisory Committee to the Surgeon General was intensively publicized in all media. The smoking and health issue receives continuing publicity. It is a rare day when the matter is not discussed in the daily newspapers. I doubt that any person who can read or listen has not been made aware of the contention that smoking may be injurious to the health of some persons. In these circumstances a caution notice would appear to be pointless.

As I have stated, we think that whether or not a caution notice should be required is a matter for Congress alone to decide. I do not believe that any such caution notice is necessary, but if this committee should determine otherwise, I hope it will consider the following points.

First, any such legislation should make absolutely clear that the congressional statute preempts the field. It would be intolerable if the States and Federal agencies were to remain free to pass conflicting laws or to impose conflicting regulations on this subject. If there is to be a caution notice, it should be uniform and again nationwide in scope.

Second, the required caution should be fair and factual. It should be phrased in a way which reflects the lack of clinical and laboratory scientific evidence of the relationship between smoking and health. To put it another way, all that has been suggested to date is that smoking over a long period may be injurious to the health of a relatively small percentage of smokers.

Third, if a warning is to be required on the package, it certainly should not be required in cigarette advertising. As I have indicated the public is aware of the charges that smoking may be injurious to health. This knowledge, plus a caution notice on every package should this be required, would make unnecessary any further warning in advertising.

Advertising is basic to the successful distribution and sale of any consumer item on a national basis. The right to advertise is an essential commercial right and is virtually destroyed if one is required in every advertisement to caution against the use of the product.

If cigarette advertising is required to contain statements warning or cautioning against use, a most dangerous precedent is set. Would automobile advertising be required to contain statements indicating the possible dangers of driving on the public highways? Would aviation companies be obliged to warn their prospective passengers in advertising of the possibility of plane crashes? Would the vendors of dairy products be required to warn against possible ill effects of cholesterol? A number of other illustrations could be offered.

The requirement for a warning in advertising, in addition to a warning on labels, is punitive in nature. It could result, as a practical matter, in an end to all cigarette advertising. I am confident that the good, sound judgment of the Members of the Congress will reject such extremes.

With respect to advertising, the industry itself has taken affirmative action to meet criticism voiced by various persons. On April 27, the cigarette companies announced the Cigarette Advertising Code. I have a copy of the code with me, and I should like to request that it be incorporated in the record.

This code prescribes certain standards for cigarette advertising. The standards relate primarily to two areas: advertising which has an appeal to young people, and advertising which contains health representations. For example, the code prohibits cigarette advertising in school and college publications. It bans testimonials from athletes or other celebrities who might have special appeal to young people. As you will note, it contains a number of provisions in this area. In addition, the code provides that no representation may be made with respect to health unless it is significant and is based on adequate, relevant, and valid scientific data.

Under the code, all cigarette advertising must be submitted to the administrator before it is used. The administrator is fully empowered to determine whether advertising complies with the standards of the code. If it does not, he will veto its use. Any company which violates the administrator's ruling may be required to pay up to $100,000.

Recently announcement was made of the selection of the former Governor of New Jersey, the Honorable Robert B. Meyner, as the administrator. The selection of a man of his stature and abilities—a man who has never had any connection with the industry—is evidence, I think, of the intent and desire of the industry to have the code enforced effectively. Governor Meyner in commenting on his selection said:

> They have asked me to serve as an impartial, objective administrator of a strict code regulating all advertising in the industry. I consider myself, in this sense, a duly appointed judge. I will do my utmost to enforce this code honestly and fairly.

This advertising code represents a sincere effort by the industry to respond to criticism of the industry's advertising which has been voiced in some quarters. It is an earnest effort at industry self-regulation.

I hope that the industry will be given a reasonable opportunity to implement this code.

In closing, I urge that this entire question of the regulation of cigarette labeling and advertising be approached in a spirit of commonsense. I am confident that the Congress will reject any other approach.

Thank you, sir.

The CHAIRMAN. It has been requested that your proposed code be inserted in the record—I guess it is a code, is it not?

Mr. GRAY. Yes, sir.

The CHAIRMAN. The code will be included in the record at this point.

Mr. GRAY. Thank you, sir.

(The document referred to follows:)

CIGARETTE ADVERTISING CODE

STATEMENT OF PURPOSES

The purposes of this Code are to establish uniform standards for cigarette advertising and to provide means whereby compliance with this Code can be ascertained promptly and fairly and on a consistent basis.

ARTICLE I

DEFINITIONS

SECTION 1. "Advertising":

(*a*) Means all forms of advertising in, or primarily directed to, the United States, Puerto Rico, any territory or possession of the United States, or any military installation of the United States, including, but not limited to, radio, television and cinema commercials of all types, newspaper and magazine advertisements, billboards, posters and signs, subway and rail or bus car cards, automobile and truck decals, posters and signs, calendars, pamphlets, handbills, matchbook advertising, and point of sale display material of all types;

(*b*) Includes any written material or article or excerpt therefrom, not otherwise advertising, when used for promotional purposes;

(*c*) Includes labeling; namely, the display of written, printed, or graphic matter upon any portion of the package, carton, or other container in which cigarettes are packaged or shipped by the manufacturer; but

(*d*) Does not include the entertainment portion of any television or radio program.

SECTION 2. "Cigarette" means any roll of tobacco wrapped in paper or in any substance other than tobacco.

SECTION 3. "Representation" means any statement, reference, or claim, express or implied, direct or indirect, whether in oral, written, printed or graphic form, or in any combination of such forms.

ARTICLE II

THE CODE ADMINISTRATOR

SECTION 1. There shall be a Code Administrator who shall be a person of recognized independence, integrity and intellectual achievement to the end that decision by him shall command public confidence and respect. The Administrator shall have all of the powers and authority necessary and proper to enable him to discharge effectively the responsibilities entrusted to him by this Code.

SECTION 2. The Administrator shall have complete and final authority to determine whether cigarette advertising complies with the standards of this Code and to enforce this Code in all other respects.

SECTION 3. The Administrator shall appoint a staff adequate and competent to assist him in discharging his duties.

SECTION 4. Neither the Administrator nor any member of his staff shall be an officer, director, employee or stockholder of any manufacturer of tobacco products, nor shall any such person have any financial interest in the business of any such manufacturer.

SECTION 5. The Administrator is authorized to convene scientific advisory panels to enable him to carry out his duties. Persons selected for such panels shall be of independence, integrity and competence in their particular areas of scientific discipline. In selecting such persons, the Administrator may consult with appropriate governmental and private agencies such as the U.S. Department of Health, Education, and Welfare; National Academy of Sciences; National Research Council; American Medical Association; Scientific Advisory Board of the Council for Tobacco Research, U.S.A.; medical and scientific societies; colleges and universities; and nonprofit research institutes.

SECTION 6. The Administrator shall by regulation establish procedures for the administration and enforcement of this Code including, without limitation, procedure for:

(a) The submission to him of proposed cigarette advertising which, together, with any supporting data or documents, shall be kept confidential, except as otherwise provided in ARTICLE IV, Section 4, of this Code or as agreed to by the submitting party;

(b) The submission of protests by parties subject to this Code concerning any determination by him;

(c) Hearings in connection with all submissions and protests; and

(d) Reconsideration by him of any of his determinations.

ARTICLE III

ADVERTISING CLEARANCE

SECTION 1. No cigarette advertising shall be used unless such advertising shall first have been submitted to the Administrator and determined by him to be in compliance with the standards of this Code; provided that, by regulation promulgated by the Administrator, specified advertising may be excepted from the requirement of such submission but not from the requirement of compliance with the standards of this Code.

ARTICLE IV

ADVERTISING STANDARDS

SECTION 1. All cigarette advertising and promotional activities shall be subject to the following:

(a) Cigarette advertising shall not appear—

(i) On television and radio programs, or in publications, directed primarily to persons under twenty-one years of age;

(ii) In spot announcements during any program break in, or during the program break immediately preceding or following, a television or radio program directed primarily to persons under twenty-one years of age;

(iii) In school, college, or university media (including athletic, theatrical, and other programs);

(iv) In comic books, or comic supplements to newspapers.

(b) Sample cigarettes shall not be distributed to persons under twenty-one years of age.

(c) No sample cigarettes shall be distributed or promotional efforts conducted on school, college, or university campuses, or in their facilities, or in fraternity or sorority houses.

(d) Cigarette advertising shall not represent that cigarette smoking is essential to social prominence, distinction, success, or sexual attraction.

(e) Natural persons depicted as smokers in cigarette advertising shall be at least twenty-five years of age and shall not be dressed or otherwise made to appear to be less than twenty-five years of age. Fictitious persons so depicted in the form of drawings, sketches, or any other manner shall appear to be at least twenty-five years of age in dress and otherwise.

(f) Cigarette advertising may use attractive, healthy looking models, or illustrations or drawings of persons who appear to be attractive and healthy, provided that there is no suggestion that their attractive appearance or good health is due to cigarette smoking.

(g) No cigarette advertising shall contain a picture or an illustration of a person smoking in an exaggerated manner.

(h) Cigarette advertising shall not depict as a smoker any person well known as being, or having been, an athlete.

(i) Cigarette advertising shall not depict as a smoker any person participating in, or obviously having just participated in, physical activity requiring stamina or athletic conditioning beyond that of normal recreation.

(j) Testimonials from athletes or celebrities in the entertainment world, or testimonials from other persons who, in the judgment of the Administrator, would have special appeal to the persons under twenty-one years of age, shall not be used in cigarette advertising.

SECTION 2. No cigarette advertising which makes a representation with respect to health shall be used unless:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data; or

(b) If the Administrator shall have determined it to be appropriate, a disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

(c) The Administrator shall have determined that the representation with respect to health in such advertising is not material.

SECTION 3. The inclusion in cigarette advertising of reference to the presence or absence of a filter, or the description or depiction of a filter, shall not be deemed a representation with respect to health unless the advertising including such reference, description, or depiction, shall be determined by the Administrator to constitute, through omission or inclusion, a representation with respect to health. If the Administrator shall have determined that such advertising

constitutes a representation with respect to health, the provisions of Section 2 of this Article shall apply.

SECTION 4. No cigarette advertising shall be used which refers to the removal or the reduction of any ingredient in the mainstream smoke of a cigarette, except that it shall be permissible to make a representation as to the quantity of an ingredient present in the mainstream smoke or as to the removal in toto of an ingredient from the mainstream smoke, or as to the absence of an ingredient normally present in the mainstream smoke, if:

(a) The Administrator shall have determined that such representation is significant in terms of health and is based on adequate relevant and valid scientific data; or

(b) A disclaimer as to significance in terms of health shall be set forth in such advertising in substance and form satisfactory to the Administrator; or

(c) The Administrator shall have determined that a disclaimer is unnecessary for the reason that the representation in such advertising has no health implication or that such implication is not mtaerial; and

(d) The quantity of such ingredient is determined and expressed in accordance with uniform standards adopted by the Administrator for measuring the quantity of the ingredient present in the mainstream smoke, provided that, until such uniform standard is so adopted, the quantity of such ingredient may be determined and expressed in accordance with any recognized scientifically valid method disclosed to the Administrator without any requirement of confidential treatment.

SECTION 5. Any advertising determined by the Administrator to be in conformity with the Code may include the following legend: "This advertising (label) conforms to the standards of the Cigarette Advertising Code."

ARTICLE V

PROCEDURES IN EVENT OF VIOLATION OF CODE

SECTION 1. Any person, firm, or corporation subject to this Code, who violates any provision of this Code, shall, in the discretion of the Administrator with respect to each such violation, pay to the office of the Administrator as liquidated damages, and not as a penalty, a sum, not to exceed One Hundred Thousand Dollars ($100,000), as determined by the Administrator after consideration by him of all relevant facts. The Administrator shall establish regulations for the determination of such violation and for the assessment and payment of such damages. No sanction shall be imposed without affording a hearing to the alleged violator. Upon written request from the Administrator, an alleged violator of the Code shall promptly deliver to the Administrator any material and documents in its possession which are relevant and material to a determination by the Administrator as to whether the Code has been violated.

SECTION 2. Nothing herein contained shall be construed to give any person, firm, or corporation, other than the Administrator, any cause of action.

SECTION 3. In the event of a violation of this Code, the Administrator, in his discretion, may make public the fact of such violation in such manner as he may deem appropriate.

The CHAIRMAN. That completes your statement, does it not?

Mr. GRAY. Yes, sir.

The CHAIRMAN. Do I understand that you are proposing that the committee and Congress give consideration to the implementation of this code?

Mr. GRAY. No, sir. We are hopeful that we will eventually receive clearance of this and implement it ourselves and put it into active being. Up to now we have not been able to do it. I am not sure that there is any action here that is required. We have asked for a clearance from the Antitrust Division of the Department of Justice, as is probably known. We received a letter back, which I wish I could take as clearance. Unfortunately, to me as a layman, it is rather difficult to understand. I do not know whether we have clearance or not, sir.

The CHAIRMAN. Mr. Gray, we have a letter from the Department of Justice on this subject, too.

Mr. GRAY. Probably the same letter, sir. Mine had no date on it. We got it early in the week.

The CHAIRMAN. The letter we had notes that hearings are going to be held by this committee and they would defer making any final decision with reference to your request at this time.

Mr. GRAY. Any permanent decision, I believe was the word, sir. At the present I take it we do not have clearance.

The CHAIRMAN. I would assume that you could not say that you have a clearance, because I gather from reading the report myself the Department took the position that it did not want to give a final answer to your request at this time.

Mr. GRAY. That seems to be the story, sir.

The CHAIRMAN. Mr. Williams?

Mr. WILLIAMS. Mr. Gray, with respect to this advertising proposal, assuming that the code does go into effect or is permitted to go into effect, how will this be enforced? Will it be by contractual agreement among the several companies?

Mr. GRAY. It will be enforced by the administrator, who we hope and feel will be Governor Meyner, under his own interpretations of the propriety of advertising. His decisions may be argued but I think it will be final. I am not sure I understand your question correctly.

Mr. WILLIAMS. Of course, the administrator will not be a Government official.

Mr. GRAY. No, sir.

Mr. WILLIAMS. That is the point I want to bring up. I would presume that the cigarette manufacturers would enter into an agreement, a contractual agreement, to abide by the advertising code; is that correct? I would like to know the mechanics of this code.

Mr. GRAY. You have me somewhat at a disadvantage, Mr. Williams, in that I am not a lawyer and I was not in on the drawing up of the code itself.

Mr. WILLIAMS. I am not directing my question to the substance of the code.

Mr. GRAY. Could I ask Mr. Ramm, who is general counsel of our company, to go into this? He is more familiar with these details.

The CHAIRMAN. Will you identify yourself for the record?

Mr. GRAY. Mr. Henry Ramm, who is vice president and general counsel of R. J. Reynolds Tobacco Co. and has been very active in the drawing up of the code itself and the arrangements for it.

Mr. RAMM. The machinery is to set up a membership corporation and the members, of course, will be the individual cigarette companies. The code will be a part of the bylaws. The members when they enter the corporation will agree to abide by the bylaws, which includes the code.

Mr. WILLIAMS. Is there a precedent for this type of code?

Mr. RAMM. Yes, sir; there are several.

Mr. WILLIAMS. And there has never been any difficulty in enforcing it?

Mr. RAMM. We know of no difficulty in enforcement.

Mr. WILLIAMS. Could you give us a hypothetical example?

Mr. RAMM. I think the motion picture industry has a code. I think the liquor industry has a code. There are a great many of them.

Mr. WILLIAMS. Do you know whether the code of the motion picture industry or the code of the liquor industry, as the case may be, imposes penalties for violations?

Mr. RAMM. I do not know that they do.

Mr. WILLIAMS. That brings me around to this point: Let us take the case of a company who is charged with violating this advertising code. The administrator imposes a $100,000 fine. I believe you have that provision. That company disagrees that it has violated the code. The company refuses to pay the $100,000. What action, then, can be taken to enforce the penalties provided under the code?

Mr. RAMM. Insofar as the monetary situation is concerned, I think the only action would be through the courts. This is in the nature of damages.

Mr. WILLIAMS. Once again I will ask you if you know of a precedent for that kind of action.

Mr. RAMM. I do not, sir.

Mr. WILLIAMS. Do you feel that fines can be imposed upon a company by contractual agreement?

Mr. RAMM. It is in the nature of damages. Liquidated damages. I think there are a number of cases where members of membership corporations have been subjected to monetary damages in pursuant to the terms of whatever arrangements they have, whether these are in connection with advertising or not, I do not know.

Mr. WILLIAMS. Do you know if that has ever been upheld by a court?

Mr. RAMM. It has been upheld in New York. This is to be a New York corporation.

Mr. WILLIAMS. Was it upheld in a Federal court?

Mr. RAMM. I would not want to speak to that, sir.

Mr. WILLIAMS. That is all, Mr. Chairman.

The CHAIRMAN. Of course, carrying this a little further, the television industry has a code. It is purely voluntary. There is no procedure by which it can be enforced. On the other hand, Congress established a procedure whereby the National Association of Security Dealers may administer their program and legally impose penalties. You are familiar with that.

Mr. RAMM. Yes, sir.

The CHAIRMAN. Has any thought been given to a similar procedure in this field?

Mr. RAMM. Yes, sir; we have discussed it.

The CHAIRMAN. You have gotten no further than the discussion stage?

Mr. RAMM. No, it did not, sir, because I think that situation is a little different in view of the fact that you do have the Securities and Exchange Commission. It may be possible to work this thing out in the form of legislation, and certainly the industry would not be opposed to having a congressional sanction for this code.

The CHAIRMAN. Our problem now is to try to decide what, if anything, in the public interest should be done, because the FTC has taken very positive action.

Mr. RAMM. Yes, sir.

The CHAIRMAN. At the same time there was immediate reaction from your industry, and as I indicated yesterday to Mr. Dixon, the Chairman of the Federal Trade Commission, there will probably be

long, drawn-out litigation. You have already announced overnight that is going to take place. I suppose we can expect 3, 4, 5, 6 years and longer of litigation on this subject. As I indicated to the Chairman yesterday, if the problem is as acute as the Advisory Committee found, and obviously from the accompanying statement to the FTC's proposed rule and the report of the Surgeon General's Advisory Committee, it seems to me that something should certainly be done in the near future and not postponed for an indefinite length of time.

So it presents a difficult problem, and a very heavy responsibility upon this committee, to decide what to do. We are trying to develop all phases and facts in connection with the problem.

Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Mr. Gray, do you have any statistics relative to the sale of cigarettes following the Surgeon General's report of January 11?

Mr. GRAY. Sir, I do not have any figures with me. There have been several reports in the press issued by the department of Internal Revenue on collections of taxes on cigarettes during the months that followed. I believe the last one that the Internal Revenue Service issued covered the month of April and the first 4 months of the year. I do not think I have seen anything on the May figures yet, sir. I do not have them in mind. They indicate a substantial decrease in the purchase of stamps during the period immediately following and since the Surgeon General's report.

Mr. YOUNGER. Did you say there was a substantial decrease?

Mr. GRAY. The figures indicated that, sir.

Mr. YOUNGER. I wonder if you might have, for the record, the figures. Can you gather them from the industry for us? I think there was some testimony or some evidence introduced that there was a dropoff in the sale following the release of the report, but then in a month or so they were back up to the consumption where it was before and in some States larger.

Mr. GRAY. I know there have been reports to that effect, sir. I have grave question as to their ability to stand up under scrutiny.

Mr. YOUNGER. You will give us those figures?

Mr. GRAY. I will get you what I can, sir.

(The information furnished follows:)

R. J. REYNOLDS TOBACCO CO.,
Winston-Salem, N.C., June 30, 1964.

Hon. J. ARTHUR YOUNGER,
House of Representatives,
House Office Building,
Washington, D.C.

DEAR MR. YOUNGER: During the question and answer period on last Thursday, you asked me to secure for the committee figures on the sale of cigarettes during the first 5 months of this year as compared with similar months in 1963. I delayed sending them to you in order to get the figures for May which had not been published but which were made available to us by phone late yesterday.

I hope that this is the information you desired. If it is not, I will appreciate the opportunity of sending you whatever else you need.

I am sending a copy of this letter and the three tables to Mr. W. E. Williamson, clerk of the Committee on Interstate and Foreign Commerce.

I am very grateful to you and the other members of your committee for the courteous treatment afforded me on Thursday. It was the first time I had made such an appearance before a committee of the Congress, and I am very happy to have had the experience.

Every good wish.

Sincerely,

BOWMAN GRAY.

Table I shows a monthly comparison of cigarettes taxed by States in thousands of packages in the months of January through May for the years 1963 and 1964. Because a difference of one business day in a month can affect the figures, we have shown two columns on the percent of change. One of these is the actual raw percent of change; the second column is adjusted to reflect the difference caused by a different number of business days in a month, as the case might be. You will see that there is no adjustment for January or for February. However, in March an adjustment was made due to less trading days in March 1963, as compared with March 1964. A reverse adjustment was made in May because there were 2 more business days in May 1963, than in May 1964.

Table II is simply a breakdown to show a daily average for these months and showing the percent of change.

Table III shows the difference in the days in each year with some additional information as to general practices in the distribution section of the industry.

TABLE I.—*Monthly comparison of cigarettes taxed by States, 1964 versus 1963*

[In thousands of packages]

	1963	1964	Percent change	
			Actual	Adjusted for trading days
January	1,882,458	1,749,410	−7.1	−7.1
February	1,705,653	1,456,766	−14.6	−14.6
March	1,730,826	1,735,778	+.3	−4.3
April	1,910,037	1,851,870	−3.0	−3.0
May	2,075,503	1,825,112	−12.1	−3.7

TABLE II.—*Monthly comparison of cigarettes taxed by States, average daily stampings, 1964 versus 1963*

[In thousands of packages]

	1963	1964	Percent change
January	81,846	76,061	−7.1
February	85,283	72,838	−14.6
March	82,420	78,899	−4.3
April	86,820	84,176	−3.0
May	90,239	86,910	−3.7

TABLE III.—*Number of trading (stamping) days by month, 1963 versus 1964*

	1963	1964	Percent change
January	23	23	(1)
February	20	20	(1)
March	21	22	+4.8
April	22	22	(1)
May	23	21	−8.7
June	20	22	+10.0
July	23	23	(1)
August	22	21	−4.5
September	21	22	+4.8
October	23	22	−4.3
November	21	21	(1)
December	22	23	+4.5
Total	261	262	+0.4

Assumptions:

1. Few jobbers, chains, and vendors operate on Saturdays and even fewer engage in stamping cigarettes on Saturdays.
2. Jobbers generally anticipate holiday requirements some time prior to the holiday.
3. The stamping activities of jobbers, etc., are generally spread evenly throughout a 5-day week.

[1] No change.

Mr. YOUNGER. When the Surgeon General was here, he made this statement: He said that

"in view of the need for further study as to the need for regulation of the ingredients that may be included in smoking products, we have no recommendation for regulatory authority on this matter. We do believe, however, that we should be given authority to require disclosure of information on such ingredients by manufacturers in order to facilitate needed research on these ingredients and to aid in explaining the need, if any, for regulation of such ingredients.

My question is: Has any request been made to your company to supply the Surgeon General with the ingredients that you use in your cigarettes?

Mr. GRAY. Not to my knowledge, sir.

Mr. YOUNGER. Would there be any hesitancy on your part to furnish the Surgeon General those ingredients for examination?

Mr. GRAY. The natural reluctance to disclose, Mr. Younger, what has always been known as a "trade secret" insofar as what we use in the flavoring of the tobaccos; that is, the sugar, the proportions, and whatever that type of thing is. We have never had that request. I do not know that we would deny it. I know of nothing in there that would cause any of us any embarrassment.

Mr. YOUNGER. That is what I should think. I can't understand why the Surgeon General should feel that he ought to have the authority by legislation to demand and under penalty force you to give these ingredients for their examination.

Mr. GRAY. As I say, I think each of us believes, perhaps erroneously, that we each have a little bit better way of handling flavor than the other fellow and we have not been anxious to tell him what we were doing because we did not want to lose whatever competitive advantage we might have in a better flavor of the cigarette than the other man.

Mr. YOUNGER. I can well understand as to the percentage of ingredients that were mixed here or there. But the ingredient itself, regardless of the percentage that is used, seemed to me something that you could furnish to the Surgeon General if he wanted it for examination purposes. I do not think, if you had an ingredient in a cigarette that caused this difficulty that you would want to continue to use it.

Mr. GRAY. It would not be used in the first place.

Mr. YOUNGER. You would have no hesitancy if the Surgeon General requested it of giving him the ingredients for examination?

Mr. GRAY. I think perhaps I would like to get some assurance. Of course, everybody in the business are nice people but I do not want to do them any favors, my competitors, as to the disclosure as to what we are using.

Mr. YOUNGER. In the Pure Food and Drug Administration they do have that authority.

Mr. GRAY. Yes, I understand.

Mr. YOUNGER. So far as we know, and from the investigation at least in the hearings I have participated in, we have had no question of the Pure Food and Drug Administration giving trade secrets to the public or to other people manufacturing the same drug.

Mr. GRAY. I understand.

Mr. YOUNGER. Or the mixture of that particular drug. I can't conceive that you would have any difficulty with the same Pure Food examiners with your product.

Mr. GRAY. I think we are here looking at the natural human reluctance to change. We never have done it. It is a new idea. I have no quarrel with your position on this at all.

Mr. YOUNGER. You are confronted anyway, Mr. Gray, with some new ideas and some new actions. There is no question about that. You foresaw that when you adopted the code.

Mr. GRAY. That is correct, sir.

Mr. YOUNGER. So what we are trying to do is to reach some understanding, simplified, if possible, to get along with this situation, without any harsh legislation.

Mr. GRAY. My problem, I suppose, in this, Mr. Younger, is speaking, if I may speak as a representative of one company in answer to your question. I see no reason why we should not furnish the required information. I do not think I am empowered in any way to obligate the competition in such a statement.

Mr. YOUNGER. I appreciate that. Thank you very much, Mr. Gray.

Mr. GRAY. Thank you, sir.

The CHAIRMAN. Of course, so that the record is clear, there is a provision in the Criminal Code which imposes a penalty upon a Federal official who discloses information that he receives from a business. I think probably that would be a matter of importance on the subject that Mr. Younger was discussing.

Mr. Gray, do you know why it is that this effort is directed only against cigarettes, and is not directed to cigars? Smoke comes through the tobacco in cigars into the system of the individual. Some people inhale it. Others do not. Most do not, I guess.

Mr. GRAY. It is a puzzlement to me sir. I do not think I have the answer.

The CHAIRMAN. Of course, I know the old story about the man asking why white horses eat more than black horses. He said that this is because there are more white horses than there are black horses.

Mr. GRAY. That is a better answer than I could have thought of, sir. I take it.

The CHAIRMAN. So maybe there are just a lot more cigarette smokers than there are cigar smokers.

Mr. GRAY. That is right, sir.

The CHAIRMAN. Apparently your industry has been giving most of the attention to cigarette smoking. In your statement you told of the effort that was made and the enormous sums of money spent since 1954. Has your industry spent money in research on cigar smoking?

Mr. GRAY. Sir, we are not manufacturers of cigars. We certainly have spent no money on research in that product. What has happened with other companies I would have no idea. They may have.

The CHAIRMAN. Mr. O'Brien?

Mr. O'BRIEN. Mr. Gray, you said that exports of leaf tobacco and tobacco products totaled more than $522 million in 1963. I assume that many other countries grow leaf tobacco also; is that not correct?

Mr. GRAY. Yes, sir.

Mr. O'BRIEN. Then there is an enormous consumption of tobacco, particularly cigarettes throughout the world.

Mr. GRAY. That is correct, sir.

Mr. O'BRIEN. Perhaps as heavy per capita in England or France or any other country as in the United States.

Mr. GRAY. The figures vary. I do not have them. If you would like for me to get them, I can. The per capita consumption varies from country to country.

Mr. O'BRIEN. But it is substantial?

Mr. GRAY. Yes, sir; it is.

Mr. O'BRIEN. Do you know any nation in the world which requires a warning in cigarette advertising such as that proposed by the Federal Trade Commission?

Mr. GRAY. I do not, sir.

Mr. O'BRIEN. In those countries, England, France, Italy, and so forth, we must assume that there are a number of scientific people who are aware of the hazards, if any, in cigarette smoking; is that not correct?

Mr. GRAY. I would think that is a correct statement, sir.

Mr. O'BRIEN. Then if we do have such a required warning we would be the first country in the world to require it.

Mr. GRAY. That is my understanding, sir, to the best of my knowledge.

Mr. O'BRIEN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Glenn?

Mr. GLENN. Sir, I notice on page 11 of your statement you speak of the lack of clinical and laboratory scientific evidence of the relationship between smoking and health. In view of all the research and investigation that has gone on for years, and the reports which we have had, do you still insist that this is so?

Mr. GRAY. I think it is a correct statement, sir. Otherwise, I would not have made it. However, as I have said, there will be people much more competent in these areas to speak to the question in detail. I would prefer to let them answer because of their knowledge and my lack of it.

Mr. GLENN. You say that this statement is correct?

Mr. GRAY. This is my belief.

Mr. GLENN. That is all. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Mr. Gray, what is your feeling about the authority that exists? I presume you have had your people go into this pretty thoroughly as to whether the Federal Trade Commission actually has the authority to get into this field, or whether it should be in Food and Drug?

Mr. GRAY. Sir, I have stated in my statement here that it is our belief that this is a matter for the Congress and the Congress alone to handle. It is not something that should be taken up by an administrative or regulatory agency in that I am informed by our attorneys that they lack the power and authority to do so.

Can I speak a little further to this?

Mr. ROGERS of Florida. Yes, sir.

Mr. GRAY. The thing that bothers me, or, rather, there are two things that bother me: In here I pointed out the chaotic condition which I believe and am certain would come about as a result of no preemption, no one single authority in this field, such as the Congress, and the Congress alone making the determination and spelling out what should be done.

I think the two attempts by agencies of the Government—appointive agencies—to take the lead in this and to take hold indicates the kind of thing that bothers me in that area.

Two, the action yesterday of the Federal Trade Commission is a first. It is something new. It is the first time anything of this nature has occurred. The assumption of authority to control industries or companies or parts of their activity. This, in itself, disturbs me as a citizen. It disturbs me as a businessman, because it would appear to me to be step one only in a planned and progressing assumption of control over the industrial economy of this country, which I submit is a very vital part of our free enterprise system. This is disturbing to me.

Mr. ROGERS of Florida. I was somewhat concerned about the section and authority used by the Federal Trade Commission to project this order or rule that they have. Because section 12, it is not claimed, gives them that authority. They use section 5. You say this has never been used before.

Mr. GRAY. I did not say that the section had never been used before. I said it is the first time I think that this kind of control has been attempted. Unfortunately, I said a while ago I am not a doctor or scientist. I have to include in that I am also not a lawyer and if we are going into a legal situation I have to beg forbearance.

Mr. ROGERS of Florida. I presume that this order would go to tobacco that could be rolled as well. Would you have any opinion on that?

Mr. GRAY. I do not think it is too clear.

Mr. ROGERS of Florida. I would be concerned about your code and the compliance with such a code by members of your industry. I think it is always advisable if an industry can regulate itself to have this done.

I recall when there was some discussion of this, they said "We will not have any advertising directed toward young people." I remember some company, and I do not know who it was, came out saying "This is a man's cigarette." This was not supposed to affect young people. But I thought that the psychology there would be to encourage young men to be smoking men. I would think you would have to be very willing to live up to the spirit of whatever code might be set. Certainly if that is going to be the answer, I think it would have to be very carefully agreed to and administered in order to carry out the juistification of setting up such a code.

Mr. GRAY. Mr. Rogers, I have been in this business all my life, and as a result I think I know most of the people—not all the people—who are connected with management of the companies involved here. This is a sincere effort on their part at self-regulation. I am positive that none of them would have agreed to and become a participant in the working up of this code, the implementation of it, the request that it be given a chance to show what it can do, without a complete and sincere determination on each of their parts that this is what we will do. And I believe them.

Mr. ROGERS of Florida. Has the Federal Trade taken any action against, say, the whisky industry because it may cause cirrhosis of the liver?

Mr. GRAY. Not to my knowledge, sir. I have not heard of such action. I do not know.

Mr. ROGERS of Florida. Thank you very much. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Devine?

Mr. DEVINE. Thank you, Mr. Chairman.

Mr. Gray, I take it, then, that your industry takes a dim view of putting a skull and crossbones on every package of cigarettes?

Mr. GRAY. Quit a dim view.

Mr. DEVINE. You are employed by the R. J. Reynolds Tobacco Co. but you are appearing here today on behalf of all the major cigarette manufacturers?

Mr. GRAY. That is correct, sir.

Mr. DEVINE. Along the plus side of the ledger, I believe your company has had a great deal to do with an educational institution, Wake Forest, in North Carolina, have they not?

Mr. GRAY. Yes, sir.

Mr. DEVINE. You have invested a lot of funds in this institution from cigarette profits?

Mr. GRAY. A great deal of their endowment originated in that area. A great deal of the income presently comes from that area. We are very proud to have it as a part of our community and we are doing all we can to support it.

Mr. DEVINE. Actually you point out in your statement and other witnesses here have backed up Mr. Kornegay's remarks about the great number of people that are employed by the tobacco industry. Of course, that is important. That, I do not think, should be the controlling philosophy that determines whether or not action should be taken in this area.

Mr. GRAY. No, sir. As I pointed out, I think this is a matter of investigation and weighing of the facts as exist and a question for the sound judgment of this committee and the Congress.

Mr. DEVINE. Tell me this, Mr. Gray: During the nearly 2 months that your voluntary cigarette advertising code has been in effect, do you find general compliance by all the persons that you represent here today?

Mr. GRAY. Let me make one small point and then go on. The code is not yet in effect, sir, as such.

Mr. DEVINE. It was adopted April 27.

Mr. GRAY. We adopted it subject to clearance being received from the Antitrust Division of the Department of Justice as to monopoly charges and so forth. Actually it is not in effect in that the administrator is not yet in office and the code is not in operation. On the other hand, I believe there has been a real effort on the part of the manufacturers, as best I can see it, to adhere ahead of time to what each of us believe will be the situation at the time it does go into effect. This may not all be approved by the administrator when he goes in. He may have different opinions or approaches to words, to pictures, to goodness knows what.

Speaking for myself, and I think I speak for all, we definitely have proceeded along the theory that it is in effect, it will be in effect, and we want to adhere to the provisions and proper handling of it.

Mr. DEVINE. Your people have decided that they would rather "fight than switch."

Mr. GRAY. I have to get a plug for one of my brands in here somewhere.

Mr. DEVINE. It has been called to my attention, Mr. Gray, that a leading cigar manufacturer recently has been advertising that this particular product has less than 1 percent nicotine, which I think would indicate that they are possibly taking advantage of the overall picture. I am not sure it is the nicotine itself that causes the problem with the U.S. Public Health Service or the Surgeon General. It might be tar or it might be something else. I do not know. I am not a physician.

It seems to me if you consider the cigar makers a competitive industry to cigarette makers, perhaps they are taking advantage of the situation. Do you find that true?

Mr. GRAY. There are some nice people in that business, too, Mr. Devine. I will not make any dirty remarks about them. I think they are trying to run their business properly.

Mr. DEVINE. I would presume, then, based on your statement here today and your testimony that since you do not feel the cigarette manufacturers should be required to put this warning on their packages, as was indicated by Mr. Dixon yesterday and his organization, on the same theory that you do not think that potatoes should be labeled as fattening or desserts might lead to too much cholesterol and things of that nature?

Mr. GRAY. There have been many products consumed and used every day by the American public which have been suspect in one area or another. I think it is all packaged up in the same approach.

Mr. DEVINE. You feel the industry can police itself to the point that the public health will be guarded, as well as reducing Federal control in all areas; is that correct?

Mr. GRAY. You lost me a little bit, sir. Police itself in advertising?

Mr. DEVINE. Yes.

Mr. GRAY. Yes, definitely.

Mr. DEVINE. And I would presume further as it relates to some of this legislation they are apparently desiring to construct withdrawal clinics with public funds to save people from themselves, I presume that your industry would take a rather dim view of that; is that correct?

Mr. GRAY. I do not see any useful purpose. I certainly would personally take a dim view.

Mr. DEVINE. Thank you.

Mr. WILLIAMS. Mr. Kornegay.

Mr. KORNEGAY. Thank you very much, Mr. Chairman. First I would like to take this opportunity to welcome my fellow North Carolinian to the committee and to compliment him very highly on a very fine and edifying statement on the matter that we have under consideration before the committee. Mr. Gray, I direct your attention to page 7 of your statement, about halfway through the first paragraph, where you state that any legislation or regulation has an important implication for the country's mass media. It was testified to earlier this week by Senator Neuberger that in the first quarter of 1964, the industry spent $26.4 million for advertising, which I take it would average out a little over a hundred million dollars a year.

My question is this, Mr. Gray: What effect, if any, would the im-

plementation or the carrying out of the rule announced yesterday by the Federal Trade Commission have in this area of advertising by the industry?

Mr. GRAY. I think it is pretty obvious, and I think I mentioned this in part of my testimony here, that if an advertiser who is attempting to convince people who use a product in the area in which he manufactures and sells, that it tastes better or tastes good—can I get my plug in here—and then turn back around and is forced to say the phrase that was mentioned yesterday, you negate the entire utilization of the advertising.

Further, let us take a specific area of the audio network television and radio. The caution notice, label, or warning that was proposed would take up sufficient time that one would not be able to use what is a very common time now of 20 seconds. All one could do would be to read the caution notice. That is all we could have in that 20 seconds. I don't believe we would be spending much money to do that.

Secondly, in the 60-second commercial, which is the largest you are permitted to purchase, so much would be taken up again so that it would take a lot of consideration whether this is worthwhile, whether we are spending our shareholder's dollars in a proper fashion. It is one of our responsibilities to do this. It could possibly result in a serious, very large reduction in advertising on the part of cigarette manufacturers.

I think this would have an implication on the mass media of this country.

Mr. KORNEGAY. In other words, to put it another way, Mr. Gray, since you make several brands of cigarettes, I won't refer to any one, but I will refer to it as X brand, if you were forced by the regulations or the laws to put in every advertising, whether it is TV, radio, newspaper or any other type of advertising covered by the rule, to say in effect, "Smoke X brand cigarettes. They have a fine flavor. But cigarette smoking is dangerous to health and may cause death from cancer or other diseases."

If you were forced to do that how much advertising would you do?

Mr. GRAY. That is a real good question and I suspect my own personal answer to you is, doggone little.

Mr. KORNEGAY. Is what, sir?

Mr. GRAY. Very little.

Mr. KORNEGAY. I would assume that each and every other company would have approximately the same attitude about it; is that right?

Mr. GRAY. I can't speak for them. I can make an educated guess.

Mr. KORNEGAY. But an educated guess would be that they would take the same position you would?

Mr. GRAY. I would guess they would.

Mr. KORNEGAY. What, in effect, would that do to competition if each and every cigarette manufacturer ceased to advertise?

Mr. GRAY. Again, sir, this is speculation, and if I may speculate with you, it probably in my judgment would have the result of freezing fairly well the level of sale, the percentage of market enjoyed by the various brands presently available to the smoking public. It would be very difficult, if not impossible, for any manufacturer to bring out a new brand of cigarettes. It would be very difficult for a man who has a smaller overall percentage of the market to increase that market or

that share. Advertising recently, pretty much in the cigarette business, has been trying to steal something away from the other fellow, a part of his market, so you increase yours. That is about the thing we are after. This would pretty well freeze the situation at the present rate of sale.

Mr. KORNEGAY. It would certainly virtually eliminate competition as we know it in the industry; is that not true?

Mr. GRAY. It would have that tendency to a great degree. You bet it would.

Mr. KORNEGAY. And actually accomplish one of the things which the Federal Trade Commission is set up to regulate, and prevent; is that not right?

Mr. GRAY. It would be a push in that direction of some magnitude, sir.

Mr. KORNEGAY. You have made it pretty clear in your statement by stating in your opinion that this is a matter for Congress and not for a regulatory agency. I take it from that statement that the position of the industry is that if there is to be regulation that you would certainly prefer it to be in the form of legislation at the hands of the Congress.

Mr. GRAY. Precisely, Mr. Kornegay. I think it is the only sensible and proper approach to it. The Congress is an elected group of people sent here by their constituents, the citizens of this country and they represent them. This is not an appointive position, and it is not a transient situation. Only through congressional action, should any action be found to be necessary, can you get a uniform regulation fairly drawn under which an industry such as ours could probably live.

If you have 50 different laws—why say 50, if everybody gets into the act, cities and counties, you have, as I said, a chaotic thing.

Mr. KORNEGAY. It could well result in an impossible situation.

Mr. GRAY. It would be impossible. There is no question about that.

Mr. KORNEGAY. Another question along that line, would it be practical, if legislation should be enacted requiring a cautionary label on the tobacco products, to require the placing of the notice on the packages of cigarettes that were in the store or in the distribution channels on the effective date?

Mr. GRAY. Already?

Mr. KORNEGAY. Yes, sir.

Mr. GRAY. That would be impossible, sir.

Mr. KORNEGAY. How much notice would you need?

Mr. GRAY. I would say they would need 3 to 4 months in order to arrange all your labels and cartons, whatever was required to have the warning put upon. These things are done well in advance. You must buy them in large quantities.

Mr. KORNEGAY. I think you say within a period of 3 to 4 months the industry would have an opportunity to sell off those products or packages which are in storage and which are in the channels of commerce?

Mr. GRAY. And to keep you going until you can get the new labels in. You don't do this overnight. It takes redesigning.

Mr. KORNEGAY. It would take time?

Mr. GRAY. I am afraid it would, sir.

Mr. KORNEGAY. The question of the code has been brought up. I want to compliment the industry on this great effort at self-regulation. After reading the code, it certainly appeared to me that the industry has prescribed for itself very high standards in the area of advertising.

It would also appear that the industry is very seriously concerned about this matter and in their effort at self-regulation in the selection of Governor Meyner as the administrator. Let me see if I understand this, Mr. Gray. You have already attempted to secure from the Attorney General of the United States clearances insofar as antitrust violations are concerned in connection with your code?

Mr. GRAY. That is right, sir.

Mr. KORNEGAY. There appears to be some question as to whether or not that clearance has been granted?

Mr. GRAY. That is right, sir.

Mr. KORNEGAY. If and when that clearance is granted, is the industry ready, willing, and able to implement this code?

Mr. GRAY. We would immediately go to work on putting it into effect as fast as the mechanization can be worked out, acquiring the staff and whatever the administrator would need to assist him in his work. That would proceed immediately.

Mr. KORNEGAY. I think you made a very fine point on page 13 of your statement in setting forth the general proposition of the danger of this precedent by the Federal Trade Commission. That is one of the matters, among others, that concerns me a great deal. Once this ball starts rolling where will it stop?

What industry, what product in this country would be safe from regulation in the area that we are talking about from the Federal Trade Commission?

Mr. GRAY. It is a matter of grave concern to all of us, I believe, Mr. Kornegay.

Mr. KORNEGAY. It certainly should be to all the companies and manufacturers of so many, many products. My good friend from Ohio, Mr. Devine, asked the question I was going to conclude with, and that is, you have pointed out very eloquently in your statement the economic meaning of the tobacco industry to this country, a point that has been made many, many times. Yet I want to point out or ask you about what contributions, if any the tobacco industry and the leaders of the industry have made to the cultural and educational life of the State of North Carolina and the United States of America. Could you give us a little information on that?

Mr. GRAY. Perhaps I was not as complete in my answer to Mr. Devine as the opportunity presented. I suppose sometimes modesty and things of that nature get inside of a fellow and you have a little difficulty talking about it. All right, sir.

I think most of you are familiar, for example, with the university named Duke near Durham, N.C. I went to the University of North Carolina, so I am not bragging about Duke. But the initial basis for the money which endowed the university, Duke University, to the extent it is, and it is heavily endowed, came from tobacco business.

Mr. KORNEGAY. It came from a little crossroads college to a great national and international university; is that right?

Mr. GRAY. Yes, sir. You have, similarly, I think, within North Carolina one of your fine State universities, in the University of North

Carolina and North Carolina State at Raleigh. The Women's College in Greensboro, which you know better than I, is the second largest women's college in the country. They support these institutions. They are recipients of funds from outside, including tobacco companies. In Winston-Salem we have Wake Forest College and its medical school. Wake Forest was a very fine but a very small institution near Raleigh. Mr. William Reynolds, who was one of the founders of our business, and others connected in one way or another with our company persuaded Wake Forest to move to Winston-Salem with a brand new campus, which, incidentally, was given by the children of Mr. R. J. Reynolds. That endowment—I forget how many millions of dollars have gone into that endowment fund yearly for the support of Wake Forest. The medical school is doing, I believe, an excellent job not only in turning out doctors for this country and North Carolina, but in research education. Our company is very interested in all of this. The majority of our charitable contributions each year go to fields of education and health, and this does not include our contributions to the American Medical Association or the other areas such as the Sloan-Kettering Institution of New York, Presbyterian of New York, and many others. I feel sort of like a fellow named Dizzy Dean, who one time was accused of bragging. Dizzy said, "No, bragging ain't bragging if you can prove it." I think I can furnish a record on it if you are interested, sir. We are conscious of our stewardship of dollars that come in, and we want to make use of them.

Mr. KORNEGAY. Recognizing your great modesty on this subject, Mr. Gray, I would like to state that one of the outstanding medical schools of the country, which has the distinction of bearing your name, was converted from a small 2-year medical college in 1940 to the great national institution with the fine reputation and status it enjoys today, and that is the Bowman Gray School of Medicine of Wake Forest College. Are similar educational, cultural, and health projects being carried out by other companies in other areas of this country?

Mr. GRAY. Yes, sir; I am sure they are. I just don't have the details as I would have about my own company. I know the medical college of Virginia in Richmond has been supported by one of our competitors very handsomely over the years. I believe, also, the medical school of the University of Virginia at Charlottesville, similarly. I just don't know my competition well enough in these areas to know exactly what they are doing, but I know of some of them.

I do not—I do know others have made contributions on a regular basis to Sloan-Kettering, which is an outstanding institution. Some of them were kind enough to make a donation to the medical center drive we had in Winston-Salem not long ago, and yet they don't have any interest in Winston-Salem.

Mr. DEVINE. Would you yield at that point for one question?

Mr. KORNEGAY. Yes, sir; I would be happy to.

Mr. DEVINE. Mr. Gray, tremendous amounts of money that have been given to these institutions is a wonderful thing. Do you have any knowledge whether any research has been conducted in any of these universities on the possible harmful effects of the use of tobacco?

Mr. GRAY. I believe, Mr. Devine, that there have been grants made through the Scientific Advisory Board of the Council of Tobacco

Research which is an organization supported by all of us, to several of these institutions. I do not believe there have been any in Winston-Salem. I am reasonably certain there have been some at the Medical College of Virginia.

Mr. DEVINE. Specifically Duke or Wake Forest?

Mr. GRAY. I don't know of any that were made to Wake Forest or to Duke, sir.

Mr. DEVINE. If you can come up with that information would you provide it to the committee?

Mr. GRAY. I would be happy to find out, sir.

Mr. KORNEGAY. That is all, Mr. Gray.

Mr. WILLIAMS. Mr. Nelsen.

Mr. NELSEN. Mr. Gray, I notice on page 5 you point out in your second point that you do not believe that any Government action is necessary at the present time with respect to cigarette advertising and labeling. Then on page 10 you stated, we think that whether or not a caution notice should be required is a matter for Congress alone to decide.

Then you later point out that the rule that has been presented by the Federal Trade Commission as stated by Mr. Dixon would not preempt State authorities, and therefore, you further state that if a law is passed it should preempt State authority to make a national uniform pattern.

Mr. GRAY. That is right, sir.

Mr. NELSEN. Don't you suspect that perhaps if the Congress does not act there is a likelihood that many of the States may act piecemeal and create a very real problem for the industry in the field of advertising?

Mr. GRAY. Mr. Nelsen, I don't suspect. I am 99.3 percent sure that this will happen. Legislation for this purpose has been introduced in a number of States in years past. I believe in one State it has been up three times. In another one, twice. Regardless, this year is the big year for State legislatures coming up. I think unless something such as this is done there will be a rash of such action.

Mr. NELSEN. In that event, would it not be better for some reasonable legislation to be enacted at the national level by the Congress of the United States that would set the pattern rather than to take the chance of doing nothing and then have the States proceed as they very likely will?

Mr. GRAY. I think I have said in here, sir, this, and I will repeat, that if a caution label or a warning is required or is found necessary, then by all means the only possible approach to it is by way of the Congress or congressional action.

Mr. NELSEN. I might again state an objection—an observation I made yesterday. Frankly the members of this committee thought that we were going to be considering legislation introduced by many members including my colleague from Minnesota sitting behind you, Mr. Blatnik, and then we were confronted with this Federal Trade Commission report and the rulemaking which we think would have been wisely withheld until the Congress considered this matter. We hope that whatever action this committee takes is in the right direction with reasonable modifications that are fair and equitable. I thank you for your testimony.

Mr. GRAY. Thank you, indeed.

Mr. WILLIAMS. Mr. Macdonald.

Mr. MACDONALD. Sir, I have just one question to ask. I was not here when you gave your statement but I read on page 4 about the Council for Tobacco Research which you say is comprised of eminent medical scientists and grants of over $7 million have been given to that body by the cigarette industry or tobacco industry.

If that body did come up with the same findings as the Surgeon General did, what would the attitude of the tobacco people be about the present legislation?

Mr. GRAY. To begin with the grantees who receive money under the scientific advisory board; that is, the vehicle which handles these grants, are perfectly free and certainly requested to publish whatever findings they may arrive at in the course of their investigations. These, however, are scientifically and medically oriented and directed research programs and are not concerned with surveys and statistical reports.

So there is some difference in the area of operations here. I am not a statistician. I have declined to be a lawyer, doctor, or scientist up to now. I have to say I am not also a statistician. I believe there are scheduled further witnesses who would comment on the Surgeon General's Advisory Committee report which might be a partial answer to your question and in that they work in one way, these people here are working toward another.

I don't see how we could get a similar report from a group of independent people working independently on this, that or the other phase medically as compared with the statistical work being done by this other group.

Mr. MACDONALD. Then you say that the Surgeon General is in a much better position to come out with a report of the sort that he did come out with than is the group that you finance?

Mr. GRAY. The group that have been handling this money here have made public all the findings, as far as I know, of this research. Up to now none of it has come up with a positive answer which would be in the area that this causes ill health or this is injurious.

Mr. MACDONALD. If they did?

Mr. GRAY. If they did they would bring it out. Then what do we do?

Mr. MACDONALD. Yes, sir.

Mr. GRAY. We get awfully fast to work to see what we can do about it.

Mr. MACDONALD. I thought you already were working on that. I see on TV that they are making cigarettes out of cabbages.

Mr. GRAY. That is not us, sir.

Mr. MACDONALD. As a nonsmoker I don't know. I thought the tobacco industry was trying to help alleviate this situation.

Mr. GRAY. We don't know what to go at. It is just a terrifically complex problem. Gracious, I would suspect others like ourselves are looking at everything that is mentioned in the press. We look to see what it is. By the time you get around to looking at this, something else comes up and this one is out of the picture. It is a pretty confusing situation.

Mr. MACDONALD. I agree with that.

Thank you, Mr. Chairman.

Mr. WILLIAMS. Mr. Curtin?

Mr. CURTIN. Thank you, Mr. Chairman.

Mr. Gray, assuming that it was proven beyond all doubt that cigarette smoking did cause cancer of the lung and bronchitis, would you then feel that the Federal Trade Commission was fair and reasonable in making a request for a notice, such as they have outlined, on all packages of cigarettes?

Mr. GRAY. I believe you assumed that it had been proven beyond doubt that this was a fact; yes, sir.

Mr. CURTIN. You think such a notice would then be justified?

Mr. GRAY. I think you would have a whole lot more than just the Federal Trade Commission Act involved in such a situation.

Mr. CURTIN. Assuming that it was proven, do you think it would be all right for the Federal Trade Commission to require such a notice?

Mr. GRAY. I do not know how you prove this and that is one of the problems. If it is proven that cigarettes are harmful, we want to do something about it regardless of what somebody else tells us to do. And we would to our level best. This is just being human.

Mr. CURTIN. Of course, you did not answer my question, sir.

Mr. GRAY. I do not know what the Federal Trade Commission could do. If the rule they now have promulgated, is your question, would I think that would be a proper rule if cigarettes were found definitely without question to be a cause of disease?

Mr. CURTIN. That is right.

Mr. GRAY. I do not think we could object to anything on that basis.

Mr. CURTIN. I am sorry, I cannot hear you.

Mr. GRAY. I do not see how I could have an objection to a rule if that were the case.

Mr. CURTIN. Then, in your opinion, it is just a question of proof?

Mr. GRAY. I do not think it is the Federal Trade Commission. I think it is the Congress who will say: You do this.

Mr. CURTIN. You feel it is a question of lack of adequate proof that cigarettes are harmful to health?

Mr. GRAY. I do not think they have proven it. I said many times that this is not a proposition for a regulatory agency. I am definitely convinced, sir, this is a matter for the Congress and there it should be.

Mr. CURTIN. Mr. Gray, a previous witness has said that during the 1950's there was intensive research by all the competitive tobacco companies in an effort to reduce the tar and nicotine content of their brands and they then advertised how they had done these things and made better cigarettes.

It was further said that the Federal Trade Commission clamped down upon advertising claims based on superior or improved filters as a result of such research. When that happened, the tobacco companies stopped their research to try to make safer cigarettes, according to the testimony.

Would you care to comment on that?

Mr. GRAY. Of course, not all the companies were engaged in the "advertising derby" to which this witness was referring.

No. 2. In the effort to make a safer cigarette, you come back to the question of how or what is it that is unsafe now. This has not been demonstrated. All you can do is examine everything that is proposed and try to check it out.

Up to now, as I say, there has been no clinical or laboratory evidence or proof that there is a substance or what the substance is, which is a definite cause of disease in humans. This is a problem. So how do you make a safer cigarette if you do not know what is safe or what is unsafe?

Mr. CURTIN. Did the tobacco companies stop their efforts to reduce the tar and nicotine content in cigarettes in the late 1950's after the FTC ban?

Mr. GRAY. I can't answer for every company. I do not know what other companies did.

Mr. CURTIN. Did your company?

Mr. GRAY. No. We are researching in that area all the time. If it might be useful presently and I am not sure it is.

Mr. CURTIN. That is all, Mr. Chairman.

Mr. WILLIAMS. Mr. Van Deerlin?

Mr. VAN DEERLIN. Mr. Gray, I found very little in your prepared statement with which I can disagree. But under questioning by both Mr. Rogers of Florida, who is not with us, and under questioning by Mr. Curtin, you have gone a step somewhat beyond anything contained in your formal statement. You have just stated that you do not think that this was a proper area of concern for a regulatory agency of the Government. Before that, you expressed the fear that the order issued yesterday by the Federal Trade Commission was step 1 in a Government effort to take control over a private industry.

You expressed fear that it is a bid for assumption of control over free enterprise. You have described the tobacco industry as the oldest industry in America. It is not, however, the oldest profession. In my hometown, one of the most flourishing free enterprises, until a few years ago, was prostitution. I heard many arguments raised against the curbs which were placed on that activity at the local level of government, but I did not hear any criticism based on the intrusion of free enterprise.

Mr. Gray, just what is your conception of the responsibility of a Government regulatory agency in an area such as we are discussing this week?

Mr. GRAY. Which one? Excuse me, sir, I did not mean to be factetious.

Mr. VAN DEERLIN. I can only say that you are the most appealing witness we have had this week. The competition is not severe in that category. I meant Government control of cigarettees or any product which is found to be harmful.

Mr. GRAY. If the cigarette industry is to be controlled, and advertising—and this is the area which we were talking about, and labeling also—this naturally, I think, should follow that in other areas whether there has been allegation made that it is a dangerous product or item, similar action would be taken right straight down the line or should logically follow, I believe. Here the Trade Commision is going beyond what I am advised by attorneys is a lawful area in which they can operate. This is what concerned me about it, as I said. It gives the appearance of being step 1 to gather under more control of one industry—control which amounts to a very large proportion.

I do not see how this would be anything but a first step, if successful, that would lead to others similarly in other industries. If an

automobile company—and I used this illustration before—advertising its new "scatback," or whatever, says, "Look, we have a new car, it has eight cylinders, it has this and that, and also you must remember it is a very powerful thing, therefore, if you get out on the highways you could get killed with it."

This is control; this is holding in advertising again. This is just one illustration, sir. I could go on to many items. Take the dairy products which I mentioned.

Mr. VAN DEERLIN. You said this is an area for Congress to act in?

Mr. GRAY. I say it is of such magnitude and of such importance to the country as a whole, and to people who like to smoke and people who are engaged in the tobacco business from top to bottom from the time the seed is planted until the man lays down his money to buy a package, that it is naturally a matter for the Congress and not for a regulatory agency.

Mr. VAN DEERLIN. It is a matter of degree. Surely a regulatory agency was within its proper sphere in going after poisoned cranberries a few years ago, or Japanese toys which contained some substance which was inimical to the health of small children.

Mr. GRAY. And which had been proven.

Mr. VAN DEERLIN. Ostensibly, there is strong evidence in this field; is there not?

Mr. GRAY. I think there is some question on that yet, sir. Sufficient to make an argument, certainly.

Mr. VAN DEERLIN. I was interested in finding out whether you feel that regulatory agencies are an improper tool in meeting any of these problems?

Mr. GRAY. I did not say that, I do not believe, sir. I think that the Federal Trade Commission certainly has certain powers given it by the Congress in which it is supposed to act and this is very proper.

Mr. VAN DEERLIN. Which relate to the protection of the consumer.

Mr. GRAY. False and misleading advertising is an example. This is very proper. Certain areas of unfair competition or competition which does not allow all classes of customers to participate—what is the word they use—relatively for display of materials. These are very proper and properly enforced. This goes beyond that, in my opinion.

Mr. VAN DEERLIN. I yield to my colleague from Maryland.

Mr. FRIEDEL. Thank you.

Mr. Gray, in reading your statement on page 11, the last paragraph, you say:

> The caution to be fair and factual should be phrased in a way which reflects lack of clinical and laboratory scientific evidence as to the relationship between smoking and health.

Would you care to comment on Dr. Terry's statement where he said that he would like to set up a statistical laboratory for scientific efforts? I did not hear any comments on that. What is your opinion on that?

Mr. GRAY. What type of laboratory? I missed the question.

Mr. FRIEDEL. He wanted to set up a statistical clinic and a scientific laboratory to study injury to health from cancer and bronchitis or whatever diseases there might be.

Mr. GRAY. I think the posture of the industry has been fairly well understood. In this we have spent a lot of money of our own and are

willing to spend more and intend to in research on the whole question of smoking and health.

We think this is where the impetus should be. We think this is necessary. We think this needs being done. Any additional proper research that might be done under the situation described by you, sir, would be welcome. This is fine. This is what we need, more research. It is so darn complex now that the answers are not here. They must be found before we know where we are.

Mr. FRIEDEL. Your statement was negative. I want something on the positive side.

The Surgeon General said he would like to have the authority to do that. I would like to know your opinion.

Mr. GRAY. Presently there is such a lack of knowledge in this area and it is so complex, that is my position here. I stated that we feel, and we are on public record, that more research is needed and a great deal more research is needed. We are doing what we can in our best efforts to encourage and provide for this research. Additional research being requested in Dr. Terry's proposal here is very necessary. It is fine, it is good.

Mr. FRIEDEL. Do you think that the Surgeon General should make a further study and should have that authority?

Mr. GRAY. I thought you were talking about getting real scientific research into this problem.

Mr. FRIEDEL. Yes.

Mr. GRAY. Yes, this I think is fine.

Mr. FRIEDEL. Thank you very much. I wanted to know the affirmative end of it rather than just the negative.

Mr. GRAY. Yes, sir. I cannot too strongly say that we not only need, we welcome, we desire, we ask for additional research.

Mr. WILLIAMS. Mr. Cunningham?

Mr. CUNNINGHAM. Thank you, Mr. Chairman.

Mr. Gray, I found your statement very helpful and informative and I want to compliment you for it. Regarding the report of the Surgeon General which condemns cigarette smoking, I asked him whether or not they also went into the field of air pollution. I am thinking now of diesel fuel fumes and exhaust fumes from automobiles.

In my opinion, having had some experience in this field, I can't help but feel that these fumes are largely responsible for respiratory illness. I did not get a clear response. I have not read the report.

Do you know whether they gave any prominence or went into the angle of air pollution generally in making their finding?

Mr. GRAY. Mr. Cunningham, might I refer you to one of the other witnesses who is to follow to talk about the Surgeon General's report? I have read it, but being somewhat less than competent in the field of science and statistics, I was somewhat confused myself.

Mr. CUNNINGHAM. Mr. Gray, this report condemns cigarette smoking, and as has been brought out here today, not other types such as cigars and pipes.

Do you know if in the Advisory Committee report whether they investigated methods of inhalation of cigarettes? The reason I ask that is I suppose that if you smoke a couple of packs of cigarettes a day and the moment you light them keep drawing that hot air rapidly down that is likely to do some damage.

On the other hand, if you roll the smoke around a little bit, cool it off, it might not do such damage. Do you know if they made any study as to people's habits of inhalation?

Mr. GRAY. I do not know, sir.

Mr. CUNNINGHAM. That is all, Mr. Chairman. Thank you very much.

Mr. WILLIAMS. Mr. Pickle?

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Gray, I told the Chairman of the Federal Trade Commission yesterday that in my opinion perhaps the language of the rule issued was too harsh. There are a lot of questions still to be answered and obviously a lot of reaction across the country will take place upon the issuance of this rule.

I noticed this morning in the New York Herald Tribune an editorial which points out how far reaching this kind of language would be and how ridiculous in some respects it might be. In other words, how far would you carry it? I would think you would admit that this is a national problem. I think you just said so. This is a problem that is not going to go away with this hearing because it is too serious a question. It affects too many lives and too big an industry.

My question is a hypothetical one to you. Since you have said that if you had your "druthers," you would "druther" Congress state the rule. Are you in a position to comment on this type of possible labeling? Suppose that either the Congress or the FTC or HEW passed a law that said each package of cigarettes should be labeled "cigarette smoking may be injurious to your health" or some similar language that would be less harsh? How would you feel about that type of labeling? Would that be acceptable to you or the industry?

Mr. GRAY. I believe you said you were posing me a hypothetical question and I will have to answer you in a relative way, if I may. I would certainly consider it a whole lot less onerous than many others that have been proposed. I think it would come nearer, although I do not want to endorse those particular words which I do not think you are wedded to.

Mr. PICKLE. I do not intend to try to propose specific words but just the general sense only.

Mr. GRAY. I understand. I think in my statement that if such labeling is going to be required—I would like to get the wording—it should be phrased in a way which reflects the lack of clinical and laboratory scientific evidence of the relationship between smoking and health.

To put it another way, all that has been suggested to date is that smoking over a long period may be injurious to the health of a relatively small percentage of smokers.

The point here is that there are just many millions of smokers who so far as I know are not injuriously affected by cigarette smoking. This does not apply across the board to everybody. It may be injurious to some, perhaps. Relatively I would prefer what you were talking about to the others.

Mr. PICKLE. We would all admit that it may or may not be in some instances. But your industry would not have contributed $7 million to study this problem if you thought this was a passing fancy somebody had; and neither would this panel have been appointed if there was not a serious question about it.

Mr. GRAY. That is correct, sir.

Mr. PICKLE. If we are asked to arrive at language that would be fair and reasonable to the health of this country as well as to an industry as important and as great as the tobacco industry.

Mr. GRAY. I believe, Mr. Pickle, it would be improper for me to attempt to dictate or suggest language to you on this point. I think, No. 1, you have two things here: One, is it necessary? If you should find it necessary, then a reasonable caution notice in your judgment or the judgment of the Congress fairly reflecting the situation as it is known today is as far as I could go with this. I am not in a position to offer you a label and say, "Look, this I will take."

Mr. PICKLE. Then if you would not comment on language I have just stated, I assume you would not want to comment on language that might caution the Surgeon General's report has shown that smoking may be injurious to your health?

Mr. GRAY. My only comment is that if we begin to have a lot of words we would not have room to put them on the package. This is one of the problems, also.

Mr. PICKLE. I take it you would rather not have any kind of labeling or warning?

Mr. GRAY. If I had my druthers?

Mr. PICKLE. Yes; if you had your druthers. Since this is such an important national problem you would rather the Congress do it and you would hope that language would be less harsh than that which has been issued by the FTC?

Mr. GRAY. Arrived at with consideration of all the factors involved.

Mr. PICKLE. I have not further questions, Mr. Chairman.

Mr. WILLIAMS. Mr. Broyhill?

Mr. BROYHILL. Mr. Gray, I want to add my welcome to you. I read with a great deal of interest that the industry has joined together in the cigarette advertising code, and also noted with interest that the Chairman of the FTC yesterday complimented this move in his testimony.

I only wanted to ask if this code has taken effect now or if it has not, what date it will take effect?

Mr. GRAY. I can't give you the date. It has not taken effect officially yet because we are not yet certain that we have gotten clearance from the Antitrust Division of the Department of Justice as to the criminal aspects of code adherence.

Mr. BROYHILL. Would a clear synopsis of your statement be that you feel that no action in labeling or regulating advertising in the tobacco industry is necessary, but that if it is, it should be in this committee and the Congress that should make that decision?

Mr. GRAY. Yes, sir.

Mr. BROYHILL. Thank you very much.

Mr. MACDONALD (presiding). Are there any other questions?

Mr. WATSON. Yes, Mr. Chairman.

Mr. Gray, I should like to commend you for both your prepared statement and your responses to the questions. I would like to ask two or three questions. I have some others but they are just probably merely repetitive. I likewise want to commend you for the code which the industry has agreed upon. My only regret is that a Federal agency has kept you from putting this code into effect.

Is that not correct, sir?

Mr. GRAY. That is right.

Mr. WATSON. The American people should know that the tobacco industry is anxious to put into effect this code but putting it into effect collectively has been withheld by the Federal agency.

Mr. GRAY. Yes, sir; I think that is a fact. We do not think we have the clearance yet.

Mr. WATSON. Notwithstanding the failure to get approval from that agency to put this code into effect, which would prevent advertising of cigarettes directed primarily at youth you have individually, as companies, proceeded to try to follow that code individually rather than collectively.

Mr. GRAY. That is right. That is my understanding. I know that is what we have done. By reading ads I think the others have similarly acted.

Mr. WATSON. Are you not as an industry on the horns of a dilemma? The rule which was handed down by the Federal Trade Commission, I think precipitously and erroneously yesterday, said that they would give the industry until July 1, 1965, to get your advertising house in order, so to speak, as I understand the rule. But yet you, through this code, are trying to get approval to proceed to put your advertising house in order but a Federal agency refuses to give you the approval.

Mr. GRAY. That is about the story, sir. We are implementing it individually. We would like to get it buttoned up and really get going on the whole thing as fast as we can. We are most anxious to put it into effect.

Mr. WATSON. The most effective way to proceed is collectively rather than individually?

Mr. GRAY. That is correct, sir.

Mr. WATSON. Through your code you provide for liquidated damages and that is enforcible by law against any of the member companies which violate this code.

Mr. GRAY. We had some discussion about the law on this and I am not a lawyer. I do not want to try to repeat the discussion on that one. Frankly, I do not understand these legal things. When this goes into effect anybody who is in violation may be fined—that is not the word.

Mr. WATSON. Assessed damages up to $100,000.

Mr. GRAY. That is right, sir.

Mr. WATSON. Even in your industry I assume that $100,000 assessment of damages would be rather substantial.

Mr. GRAY. It is not something you would go seeking opportunities to pay.

Mr. WATSON. I want to commend you addition for the medical, educational, and other contributions which you have made. I only wish you were in South Carolina where you could make some of those contributions to some of our fine institutions.

You said earlier that you had not gotten in a plug for any of your products. I tried to buy a pack of Winston but the demand was so great, the supply was exhausted, so I had to end up with another brand.

Mr. GRAY. I believe we have or you have in South Carolina some independent colleges down there that we have been supporting and also Clemson.

Mr. WATSON. May I ask you just one further question?

Did I understand correctly that, so far as you know, no other country has contemplated or has in effect now such a ruling as was issued by the Federal Trade Commission yesterday?

Mr. GRAY. I do not know about contemplated, sir. I do not know any now in effect.

Mr. WATSON. So there is the implied admission that the American people are not intelligent enough to decide for themselves.

Mr. GRAY. That is certainly an interpretation that could be put upon it.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. GRAY. Thank you very much, sir.

Mr. MACDONALD. Mr. Rooney?

Mr. ROONEY. Thank you, Mr. Chairman.

I, too, would like to commend you on your excellent statement, Mr. Gray. I am completely sympathetic with your cause. I see no reason why we should push the panic button. I certainly hope that this committee can help your industry in this hour of dilemma. I feel that this is a situation that certainly needs a lot more study.

As I said before, I see no reason why we should push the panic button now. I hope we can take care of this problem during the proceedings of this committee.

Mr. GRAY. Thank you very much, sir.

Mr. MACDONALD. If there are no other questions, I would like to thank you on behalf of the committee, Mr. Gray. You are excused.

Mr. GRAY. Thank you for letting me be here, sir.

(The following letter was later received from Mr. Gray:)

R. J. REYNOLDS TOBACCO CO.,
Winston-Salem, N.C., July 1, 1964.

Hon. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: I testified before your committee on Thursday, June 25, in behalf of the cigarette manufacturers concerning various pending bills relating to cigarette labeling and advertising. During my testimony, I discussed the cigarette advertising code, and I commented upon the industry's request to the Department of Justice for an antitrust clearance of this code.

I have subsequently been advised by counsel that the letter from the Department of Justice addressed to Paul A. Porter, Esq. (a copy of which, I understand, has been transmitted to you by the Department), constitutes, in substance and effect, an assurance that adherence to and implementation of the code will not result in criminal prosecution under the antitrust laws. In other words, I am advised that the letter is a commitment from the Department of Justice to the cigarette manufacturers subscribing to the advertising code that the Department will not bring a criminal prosecution under the antitrust laws on account of "adherence to the code," subject to the condition that the clearance applies "until the views of Congress and the Federal Trade Commission have been made known" with respect to "standards for advertising dealing with the public health hazards."

I am further informed—and I am authorized to state— that counsel representing other cigarette manufacturers who participated in discussions with the Department concerning the clearance request are of the same opinion.

Relying upon the foregoing assurances from the Department of Justice, the cigarette manufacturers are taking steps promptly to effectuate the advertising code. Specifically, we are forming a nonprofit membership corporation, and we

are entering into a contract with Governor Meyner to act as the administrator. As soon as these various organizational details are completed, the administrator will begin his work.

We are confident that the Department of Justice will notify us promptly should the occasion arise when the clearance is deemed by the Department to be no longer operative.

I am sending a copy of this letter to Hon. William H. Orrick, Jr., Assistant Attorney General in Charge of the Antitrust Division.

Sincerely,

BOWMAN GRAY.

Mr. MACDONALD. Congressman Chelf, of Kentucky.

STATEMENT OF HON. FRANK CHELF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. CHELF. Mr. Chairman and gentlemen of the committee, again I want to reiterate what I previously said off the record in that you are very kind and very gracious and very sympathetic and understanding of my problem, and I want you to know that I deeply appreciate it. This matter means so very, very much to my good people who I have the honor to represent here in Congress and who have been so good to me over the past 20 years.

Mr. Chairman, as the Representative of the Fourth Congressional District of Kentucky which is the second largest burley tobacco producing district in our State, it is not only a pleasure to appear before you today but I want to thank you for that privilege.

Since tobacco is indigenous to Kentucky and important to the people I represent here in Congress, every phase of this industry is vital to their economic well-being.

It is natural, then, that I should reflect their intense interest in the legislation being considered here today by your great committee. In the larger context, however, I, as well as my constituents, have a profound concern for the physical health and well-being of themselves and all of the American people.

It is with all of these considerations in mind, therefore, that I would like to give you my thinking on this entire question. While we all understand and appreciate the commendable effort of the Surgeon General to protect the health of our citizens by revelation of all factors which might be detrimental, nevertheless, it is my firm conviction that it would be erroneous to give to the Department of Health, Education, and Welfare, the Federal Trade Commission or any other Federal agency the regulatory power of labeling the contents of a package of cigarettes as being dangerous to health as is proposed in some of the measures before this great committee.

There are many reasons why, in my humble judgment, this should not be done. This so-called newly discovered authority of the Federal Trade Commission that has supposedly lain dormant for lo these 48 years to the contrary notwithstanding.

Can one imagine a Federal agency of bureaucrats not using for any length of time, much less 48 years, any latent or patent power that it may or may not have ever had? I contend, sir, and gentlemen of the committee, that the Federal Trade Commission does not have this authority.

Now under the 1914 act creating the Federal Trade Commission—and setting out its duties—as it was brought out yesterday, I want now to read you a quote from that law.

> The Commission is hereby empowered and directed to prevent persons * * * from using unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce.

So that I would say to you what is unfair? What is deceptive? There is no yardstick, no definition. Now if a given cigarette were to be advertised that it would grow hair on a bald head or blue grass on a front lawn, that, in my opinion would be unfair and consequently deceptive. I also contend that this regulatory FTC commission has gone off its rocker with illusions of grandeur.

The Congress must act now in order to show who is the boss; the various presidential appointees holding dearly onto office—or the duly elected representatives of the people of the United States. Soon after the Surgeon General's "health" report was published and the information transmitted through every possible news media, radio, TV, magazines, newspapers, to all segments of the American public, tobacco consumption slumped at first.

However, now the statistics indicate that sales have risen again which is a positive indication to me certainly that our people have minds of their own in spite of the reported danger and people are exercising their own good judgment in the matter by deciding to continue to smoke. It is thus demonstrated that the use of tobacco is a tension reducer and a source of vast personal satisfaction to some 80 million users. To label cigarettes—cigarette packages in the manner proposed by the FTC is about as necessary as their hanging a sign on a lightning bug's tail reading: "Danger, high voltage." It makes about as much sense as Sally Rand doing her fan dance in a tin kimono on a deserted isle without the benefit of movement. It is like the labeling of all liquor bottles to read that the direct and continuous use of the product might become habit forming or the labeling of butter that too much consumption of the product is likely to cause obesity or produce too much cholesterol which is also a health hazard.

Furthermore the tobacco industry is an enterprise consisting of more than $8 billion. This is very important to the economy of our Nation, pouring as it does $3,300 million in taxes annually into local, State, and Federal coffers. In addition to this, tobacco is very important from the standpoint of the vast employment opportunities it provides and the equipment used in all phases of its processing. Indeed the tobacco industry involves as it does also the printing industry, transportation facilities, advertising and many, many other fields of endeavor and is a highly important link in the vast exchange of commerce and industry in our Nation.

We would do well to keep in mind these significant contributions of tobacco to our Nation's economy, being careful to protect it by refusing to adopt ill advised, hasty, and needless practices which are inimical to the flourishing of this, one of our Nation's bounties. Now, Mr. Chairman, and gentlemen of the committee, there may be those who would argue that all of these considerations pale to insignificance in the face of the need to protect the health of our Nation which could be fostered by the action sought in the measures to label cigarette packages as a warning to the public of the harmful effect of tobacco.

But I contend that this is not the answer to the problem. I do have a proposal which I feel is the answer to this problem and that is, research and more research. Since we do not know the source of the harmful effect of tobacco it seems to me to be ridiculous to condemn all tobacco without knowing just what is in the leaf that has to be removed.

This especially is pointed up when we confront the fact that evidence has been shown that the burning of even vegetable fibers other than tobacco has the same inherent properties of containing possible carcinogenic materials as allegedly found in tobacco. At present there are no defined standards of quality for tobacco. Each cigarette company has its own formula of what goes into its product but the differences are not great. Certainly the cured tobacco itself is as clean as a hound's tooth when it goes into the finished cigarette.

Mr. Chairman, I repeat that the answer to this entire question is research which eventually could reveal to all of us the hidden factors upon which decisive and effective action could be taken to avoid any and all health hazards in the smoking and usage of tobacco without the deprivation of its many pleasant, useful, and highly beneficial contributions to the individual, to our States, and to our country.

The University of Kentucky at Lexington, Ky., especially the medical center and the agricultural experimental station together with the National Tobacco Research Laboratory are pursuing work on the tobacco health problem with ability, imagination, and dedication. They are working diligently on the pertinent aspects of tobacco research such as enzyme chemistry, germ-free lab techniques and identification of tobacco smoke constituents. President Oswald of the University of Kentucky, himself a scientist, states that in this connection there is an intensification of graduate work which cuts across college and departmental lines. The university is located in a very important tobacco producing area with its research facilities, together with spindle top research lab nearby, is in a unique position to carry out the aims of the research program.

I feel that the work should be continued with all speed, zeal, and intensity not only there but at all other State centers equipped for this specific job. I think at this juncture I might say, Mr. Chairman, that I think the greatest thing that you have before this committee is the fact that these tobacco companies are acting in good faith. They have met and organized themselves into a group and they have adopted a code of ethics with which to govern themselves. When they mutually agree to a fine for any violation of their code up to $100,000, that's not messing around.

Is there any precedent for it? Yes, baseball, when the Cincinnati Reds and the Chicago White Sox some 40-odd years ago practically ruined baseball, the owners met and elected the late Judge Landis who cleaned up the game of baseball. He restored baseball to a position wherein and whereby it had the respect of respectable people. The same identical thing happened with the movies when they got together and selected Will Hays. He cleaned up the movies. Here you have, my friend, the same situation. The only difference is tobacco companies are confronted with an accusation, not proof; an indictment, not evidence; and I say to you quite frankly that this great committee, and I want to compliment you for taking your time and

patience and efforts of giving these tobacco people an opportunity to be heard, because they don't just alone represent cigarette manufacturers. They represent my little tobacco grower, yes, my thousands of burley tobacco farmers. They also represent the tobacco warehousemen, they represent the tobacco auctioneer, they represent all phases of the entire tobacco industry. They are therefore not only entitled to be heard but not to be condemned by a group of Federal bureaucrats even before the evidence is all into the record. A criminal gets better treatment in our courts.

So gentlemen, I want to thank you for your kindness and consideration in hearing me. Mr. Chairman, it is my firm belief that the answer to all the present uncertainties and unknowns may be—may become a matter of scientific fact upon which to base the proper solution to the problem. Thus obviating the necessity of taking the ill-advised and improper action proposed by the present bills under consideration or the unwarranted, unnecessary, arbitrary, arrogant, unlawful, and even unreasonable edict of the FTC that was issued on yesterday.

Again I thank you from the bottom of my heart, gentlemen, for giving me this opportunity to be heard and to allow me to present our case.

Mr. MACDONALD. Thank you, Mr. Chelf. I have just one question. As I recall, Mr. Chelf, when the first report came out, did you not remark, that although you had not smoked up to that time, the report made you so nervous that you took up smoking?

Mr. CHELF. It did. To tell you the truth I have quit smoking several times.

Mr. MACDONALD. I would like to compliment our able colleague for representing his district with color and vigor. Do you have any questions, Mr. Kornegay?

Mr. KORNEGAY. Yes, Mr. Chairman, very briefly. I want to join with the chairman in complimenting you, Mr. Chelf, on a splendid statement this morning. It covered so much of the area with which we are concerned. Particularly the emphasis that you put on research and the fact that more research is needed before any tremendously damaging action is taken to destroy an industry that is so important, as you said, to the cigarette industry and to the economy of the whole Nation. There are 47 States in this country, I believe, who tax tobacco and tobacco products.

Mr. CHELF. That is right.

Mr. KORNEGAY. A tremendous flow of revenue going into the various States as well as the Federal Government?

Mr. CHELF. The city, county, State and Federal level.

Mr. KORNEGAY. And more research is needed before this drastic action is taken.

You commented on the University of Kentucky, your own State university which is doing a great job in this area of research.

Mr. CHELF. Yes, sir.

Mr. KORNEGAY. I would like to add the fact that a lot of research is going on in my State of North Carolina.

Mr. CHELF. Yes; it is. It is appreciated.

Mr. KORNEGAY. North Carolina State College and at the great Research Triangle Institute where some of the leading scientists of the

country have received a grant, small though it may be, to get into this area and see what can be done to salvage and save the lifeblood of some of the people of the country.

Mr. CHELF. It is the lifeblood. It is the cash crop of my little farmers. All we ask is a fair trial before an impartial jury, not a "stacked" FTC group.

Mr. KORNEGAY. Absolutely. We talk a lot about poverty but if anything happens to the tobacco industry you have never seen a poverty stricken area as you would see in your State and my State.

Mr. CHELF. Yes, sir.

Mr. KORNEGAY. We better haul out the third poverty bill if that happens.

Mr. CHELF. Amen.

Mr. NELSON. Mr. Chairman, I want to thank my colleague for his usual enthusiastic presentation of his point of view. We also enjoy listening to him. I would like to point out, and I am sure you agree, that the action taken by the Federal Trade Commission was rather a suprise in view of the fact that we were considering legislation in this body.

It indicated to me a little bit of eagerness on their part to move into an area that we were trying to work out.

Mr. CHELF. Exactly. They jumped the gun. They really shot from the hip—and I may say so—they missed the target—the door, even the entire barn, plus the barn lot.

Mr. NELSEN. I would like to point out that I served on a conference committee on the food and drug legislation which dealt with advertising and with labeling. In the committee hearings and in the conference we thought we had outlined some criteria in the way of advertising and labeling. We found in the labeling area we wanted the trade name and generic name on labels all the way through. We thought we had written into the report and into the language of the hearings some reasonable criteria on advertising. In spite of it all, FDA rule requires that the generic name and trade name must appear together all the way through. I am constantly more and more concerned about rulemaking which has the force and effect of law and I am especially concerned when rules such as these are issued while we in the Congress are considering legislation in comes this business right on top of it all.

Mr. CHELF. Exactly. I think it is an affront to this great committee and to the Congress of the United States of America that appointees would take that authority upon themselves. I am not the best lawyer that every walked down the middle of the road nor am I the worst either; so I can say to you that I have read this matter very, very carefully and while I may be prejudiced, naturally, for my little tobacco farmers, I do not believe that the FTC has the power or authority to issue this ruling. After all, I have been a member of the Judiciary Committee of the House for 19½ years and a lawyer for 30 years.

Yes, it is an insult and an affront to this great committee. Maybe some individuals just wanted some cheap publicity. Well, they got it and along with it some court action.

Mr. NELSEN. Thank you. I have no more questions.

Mr. MACDONALD. Do you have any questions, Mr. Rooney?

Mr. ROONEY. No, Mr. Chairman. I want to commend my colleague for an excellent statement.

Mr. CHELF. Thank you.

Mr. MACDONALD. The committee will adjourn until Monday morning at 10 a.m.

(Whereupon, at 12:25 p.m., the committee recessed, to reconvene at 10 a.m., Monday, June 29, 1964.)

CIGARETTE LABELING AND ADVERTISING

MONDAY, JUNE 29, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Kenneth A. Roberts presiding.

Mr. ROBERTS. The committee will be in order. Are there any Members of the House or Senate present who wish to be heard? If not, our first witness will be Mr. Alan S. Donnahoe, executive vice president and assistant publisher of the Richmond Times-Dispatch and the Richmond News Leader.

STATEMENT OF ALAN S. DONNAHOE, EXECUTIVE VICE PRESIDENT AND ASSISTANT PUBLISHER OF THE RICHMOND TIMES-DISPATCH AND NEWS LEADER, RICHMOND, VA.

Mr. DONNAHOE. Thank you, Mr. Chairman.

Mr. ROBERTS. We are glad to have you.

Mr. DONNAHOE. Thank you, sir.

I am Alan S. Donnahoe, of Richmond, Va. I am executive vice president and assistant publisher of the Richmond Times-Dispatch and the Richmond News Leader. In addition to my newspaper work, I have spent a good many years in the practical application of statistical method. I have been a lecturer on statistics at the University of Richmond. I have served as a member of the Committee on Business Statistics, U.S. Chamber of Commerce; the Business Advisory Committee, U.S. Bureau of Labor Statistics; and the Business Advisory Committee, U.S. Bureau of the Census. I am a member of the American Statistical Association and have served on its committee on monographs. I have a real interest in public health and have been a member of the Executive Committee of the Virginia Tuberculosis Association.

I wish to thank the committee for this opportunity to appear and make this statement in connection with the subject under consideration which is, of course, of great interest and importance to the people of my section of the country.

When the report of the Surgeon General's Advisory Committee was released last January, it became the responsibility of our newspaper to give our readers an intelligible account of not only the conclusions of the report, but also the facts and data which formed the basis for those conclusions. I found the report to be a formidable document, bristling with statistical tables, hard to understand, and even more difficult to summarize and report. Because of this, it is quite under-

standable that many newspapers relied almost entirely on either the summary provided for the press or on the conclusions stated in the report itself as the basis for their news stories.

Since the conclusions of the report seemed to be based primarily on statistics, I felt that I should undertake a more searching analysis of it for the benefit of our readers. I was surprised to find that despite the firm conclusions stated in the report, the text revealed many frailties and inconsistencies in the underlying statistical data. I think it is a fair statement that the public has little knowledge of these deficiencies and the extent to which they qualify the conclusions drawn in the report.

In this connection it is significant that within the past few weeks one member of the Surgeon General's Advisory Committee has implied that the Committee may not have been as firmly convinced of a causal connection between smoking and disease as the report's conclusions indicated. Dr. John B. Hickam, in an address to the North Carolina Heart Association, is reported by the Associated Press to have said: "The more we looked at the statistics, the more difficult it was to understand. The picture is not at all clear as the numbers appear at first."

When the Congress of the United States is considering action based upon the report of the Surgeon General's Advisory Committee, I feel that it should also be aware of the discrepancies in the statistical data which raise serious question as to the validity of the conclusions reached.

In Europe many years ago a strong correlation was observed between the consumption of corn and corn products and the incidence of pellagra. It was widely assumed that the one was the cause of the other, and this assumption resulted in a great reduction in the growing of corn and the use of wheat in this as a dietary substitute. Eventually it was discovered that pellagra is the result of a nutritional deficiency, which can be supplied by milk and greens, and that corn was simply an unfortunate victim of an inference based on statistical association.

From this and many other examples, we are led to recognize that scientific truth is a perishable commodity, and that theories in vogue today may be out of fashion tomorrow.

It is in this context, it seems to me, that we must consider the Report of the Advisory Committee to the Surgeon General on Smoking and Health.

How can one approach any subject of this kind? We can, at least, it seems to me, think in these terms:

First, does the evidence on which the theory is based appear to be valid? I think we have every right to be suspicious of any finding based on erroneous evidence, if, indeed, that should be the case.

Second, is the theory comprehensive, in the sense of explaining most of the known facts? A partial explanation is disturbing to most of us, in trying to understand any subject.

Third, is the theory consistent, in the sense that it is not contradicted by any of the evidence on which it is based or any other known fact?

Fourth, does the theory meet the test of reasonableness? Not much is said about this, but I am quite certain that this is the first test applied by all practicing statisticians. When unreasonable results

are obtained in a survey, there is a strong suspicion that something went wrong somewhere in the technique applied.

Finally, is any alternative theory available, consistent with known fact, which may be equally or even more plausible as a tentative explanation?

CONSISTENCY

Let us turn first to the question of consistency of the information said to show a connection between cigarette smoking and disease.

A story is told in Virginia about a schoolteacher, many years ago, who applied for a job in one of our rural counties, and was being interviewed by members of the school board. "Which theory do you teach,' said one such member, "that the world is round or that the world is flat?" "Well, sir," the teacher replied earnestly, "I'll tell you. I can teach it either way."

We may have somewhat the same feeling about the Surgeon General's report, when we discover that some of the evidence used to prove the connection between cigarette smoking and lung cancer can also be used, perhaps with equal cogency, to prove that there is no such connection.

For example, the report shows that Holland, Switzerland, Finland, and Great Britain have a lower per capita consumption of cigarettes than the United States, but that all have higher mortality from lung cancer. Indeed, in the case of Great Britain, the mortality rate is more than double that of the United States. Similarly, Canada, Australia, and Denmark have about one-half the United States per capita consumption of cigarettes, and show about the same mortality rate from lung cancer.

Another example can be found in the ratio of male to female deaths from lung cancer. Notwithstanding the rapid growth in cigarette smoking among women, this ratio has increased from 1.5 in 1930 to more than 6 at the present time. This trend would certainly seem to be totally inconsistent with the cigarette-causation theory.

The same statistical evidence, used by the committee to bolster its conclusion on cigarette smoking and lung cancer, shows that cigarette smokers have a 40-percent greater mortality than nonsmokers from stomach cancer. Yet, over the years, the mortality rate from stomach cancer has declined. Precisely the opposite of what would be expected if statistical association meant causation.

There are still other strange phenomena in the Surgeon General's report. For example:

It appears that once men reach the ripe old age of 70, if they smoke cigarettes at all, the more they smoke the better, in terms of further life expectancy. Indeed, from 80 to 89, the heavy cigarette smoker has only one-half the mortality rate of the nonsmoker.

In still another of the surveys used by the Committee, the men who had smoked cigarettes for less than 15 years had a slightly lower mortality rate than nonsmokers.

According to the report, there are many compounds which can induce cancer in animals, but only a small number of them can be found in tobacco smoke, and these in minute quantities. Even so, the most potent of these is said to be benzapyrene; and the Committee reports that there is 10 times as much of it in pipe tobacco as in cigarette

tobacco. Yet pipe smokers—even those who smoke more than 10 pipefuls per day, and those who had smoked for more than 30 years—have death rates no different from those of nonsmokers, according to the statistics show a higher mortality rate for former pipe smokers than for either smokers or nonsmokers.

In brief, if these statistics can be believed, it is quite safe to smoke a pipe, but highly dangerous to discontinue the practice.

These are strange facts, in light of the conclusions of the Surgeon General's report. It is not a curious form of scientific method that permits use to emphasize only those facts that support a given hypothesis and ignore all of a contradictory nature?

COMPREHENSIVE THEORY

But let us now turn to our second test. How comprehensive is this smoking-health theory? How much does it explain, and how much does it leave unexplained?

Although the statistics in the report show cigarette smokers have a higher overall mortality rate, other factors are cited that seem quite important. For example:

Cigarette smokers who take heavy exercise have a lower mortality rate than nonsmokers who take none.

Cigarette smokers among married men have about the same mortality rate as nonsmokers who are single.

Cigarette smokers who are so fortunate as to have long-lived parents and grandparents have about the same mortality rate as nonsmokers with short-lived ancestors.

Coming back to the question of lung cancer itself, the report shows that the incidence of this disease varies widely. For example:

There is a sharp variation from one region to another. (The rate in New York City has been reported as four times the rate in Iowa.)

Men in certain occupations such as bartenders, waiters, and sheet metal workers, seem unusually vulnerable to the disease, without relation to their smoking habits.

There is a strong inverse relationship with income level. Low-income males, for example, have more than double the lung cancer rate of high-income males.

Immigrants to this country have a lung cancer rate about one-third greater than the rate among native-born citizens.

Further, for these immigrants, the incidence of cancer by site varies according to the country of origin: among the Irish, high death rates from oral cancer; among the Polish, gastric cancer; among the Russians, stomach cancer; among the English, lung cancer; and so.

So far as I know, no one has suggested that smoking is causally related to matrimony, exercise, relative income, age, or type of ancestry, and yet, as we have just seen, all of these things seem to have a strong influence on the risk of cancer.

How then can we be so certain about just one element in this complex structure, when we are in such total ignorance of all the others? Most of us, quite properly, have a great reluctance to draw broad conclusions from fragmentary and incomplete evidence.

REASONABLENESS

Now let us turn to the test of reasonableness, which, as I have said, is the first test applied in practical survey work of all kinds. Where results are clearly unreasonable, it raises the strongest possible suspicion that some error in technique has occurred in some phase of sampling or survey procedures.

This leads us to what is, in many ways, the most remarkable finding in the entire report. The astonishing fact—if we are to believe the statistical evidence cited by the Committee—is that lung cancer accounts for only about 15 to 20 percent of the "excess" deaths among cigarette smokers.

About half of the "excess" deaths is to be found in heart disease, and the remainder are distributed among about every other type of disease known.

This not only staggers the imagination, but apparently it staggered the Committee as well. On most of these diseases, the typical Committee conclusion was that "the data are not sufficient to support a direct or causal connection" with cigarette smoking; and in the case of some of the chronic diseases, that "the explanation * * * is not clear."

Dr. Joseph Berkson, the distinguished medical statistician of the Mayo Clinic, has commented on this phenomenon as follows:

> The idea that cigarette smoking causes all these many deaths from all these many causes does indeed seem seriously questionable. There is not any scientifically known pharmacologic or physical explanation for so widespread and multifarious an effect.
>
> If we extrapolate the results to the general population, we must believe there are some 250,000 deaths annually from smoking-induced diseases, without any of them having been individually noted as such from independent clinical or pathologic evidence. Only by their numbers are they known.

With findings of this type, it is mandatory that survey procedures be reviewed with rigorous care; because, in actual practice, when such findings occur, they almost invariably turn out to be the result of faulty technique somewhere along the line which may make the entire survey unreliable.

VALID EVIDENCE?

What were the procedures used by the Committee in collecting data? The answer is that the Committee itself did no original research, but relied wholly on the work of others.

With this total reliance on secondary materials, the quality of such evidence must be closely examined.

The great mass of evidence before the Committee evolved from seven surveys, of various population groups, by various agencies.

One survey involved British doctors; another included men in California in nine occupations where there was some reason to expect high incidence of lung cancer; another involved California members of the American Legion; still another was restricted to Canadian pensioners of three wars; and so on. In view of this, it is not surprising that the Committee said: "None of the populations was designed, in particular, to be representative of the U.S. male population," and that to project the results of this to any population of men "must involve an element of unverifiable judgment."

But this is not all. In five of the studies, the percentage of nonresponse were 15, 32, 43, and 44 percent, respectively. The Committee itself referred to these as "sizable proportions" of nonresponse.

Even more serious to a statistician are the conditions under which the other two surveys were conducted. In the language of the Committee:

> In the two American Cancer Society studies it is not possible to present meaningful percentage (of nonresponse), since each research volunteer selected her own small part of the study population from among her own acquaintances.

These two studies represented 57 percent of the total replies in all seven studies: the majority of all cases studied, and for these, certainly, it can only be concluded that there was not the slightest pretense of scientific sampling. Indeed, if there is any way not to sample scientifically, it is to permit ladies to select respondents from within their circle of acquaintances and then include only those who are inclined to participate.

When we consider all of this: the fact that no one can tell what population was really being measured; the further fact of high nonresponse in some surveys, and of haphazard selection of respondents in the others; the result is a statistical melange of unknown and unknowable reliability.

To be certain of this we need seek no further authority than the one statistician who served on the Committee. In the second edition of his book on sampling, published last year, Dr. William Cochran had this to say on the subject:

> The following are some common types of nonprobability sampling:
> 1. The sample is restricted to a part of the population that is readily accessible.
> 2. The sample is selected haphazardly.
> 3. The sample consists essentially of volunteers, in studies in which the measuring process is unpleasant or troublesome to the person being measured.

How valid are surveys of this type? Dr. Cochran goes on to say:

> About the only way of examining how good one of them may be is to find a situation in which the results are known, either for the whole population or for a probability sample, and make comparisons. Even if a method appears to do well in one such comparison, this does not guarantee that it will do well under different circumstances.

In other words, what Dr. Cochran is saying is that surveys of this kind are not very helpful; that you really cannot tell whether the results mean anything or not; unless you can compare them with known facts; and even then there can be no certainty as to other results obtained.

Even so, let us take the criteria sugested by Dr. Cochran. Let us see if we can compare the results in these seven surveys with known fact, to see if they coincide. Let us do this with the most critical element of all: the mortality rate.

Here we find another astonishing situation. In most instances the age-adjusted mortality rate in these seven surveys is far below the known national average—not only for nonsmokers but often for heavy cigarette smokers as well. In three of the seven studies the mortality rate for heavy cigarette smokers was lower than the average for all males in the U.S. population, and in one survey was almost 30 percent below the national average.

On this, the Committee comments as follows:

> It is clear that the seven * * * studies involve populations that are healthier than U.S. males as a whole.

After pointing out that the exclusion of seriously ill individuals might account for some of this variation, the Committee still admits that "the sizes of the differences appear surprising."

Remember here that we are dealing with a type of survey that has no inner test of reliability, which can only be tested by comparing results with known facts; and that we have just found that the results do not coincide with known fact in terms of mortality rate, the most vital element of all.

What sort of weight should be attached to evidence of this kind: to surveys that fail to meet the minimum standards of scientific sampling; to statistical data to which no error limits can be assigned, to findings that are contradictory to known fact? Is this the kind of material from which to weave new and dramatic scientific theory, with far-reaching implications in the field of public policy?

ALTERNATE THEORY

Confronted with these hard questions, it is logical to look for alternate theories that might explain the various findings, with a somewhat lesser tax on our limits of credulity. More specifically, there are two sets of conditions that—with no true causal connection between smoking and health—could still generate survey findings of the type we have seen.

The first is spurious correlation. If, for obvious reasons, we assume (1) that smokers are less likely than nonsmokers to participate in a survey of this kind; and (2) that seriously ill people will not participate; then we can produce survey results with strong correlation between smoking and disease, even though there is no correlation whatsoever in the population at large.

On page 116 of the Committee report, there appears a table prepared by Dr. Berkson, showing an actual arithmetical example of how these assumptions can generate high correlation in survey data, from zero correlation in the population as a whole.

It is highly significant, in my mind, that the Committee agreed that Dr. Berkson's assumptions were basically correct, and disagreed with Dr. Berkson only in the degree to which they actually occurred; a distinction which falls into the area of pure speculation.

Closely related to this is another type of survey error. Consider the method by which the Committee measured the relationship between smoking and various diseases. For each such disease, the mortality rate among smokers was divided by the rate among nonsmokers, to get a relative measure of the difference. But, as we have seen, all of the surveys were quite atypical in terms of known mortality rates, and particularly so among nonsmokers. The Committee's statement on this point is commendably candid:

> The low death rates for nonsmokers suggest the possibility that the studies recruited unusually healthy groups of nonsmokers.

Now, if we have artificially low rates for nonsmokers which is conceded to be true, and we divide these into normal rates for smokers, what do we get?

Clearly, we get what appears to be high mortality for smokers, generated wholly from sampling bias.

But apart from bias and spurious correlation, still another condition can provide an explanation of the survey results. It is possible that the correlation between cigarette smoking and various diseases is real, but without causal significance, and this would be the case, for example, if both smoking and disease were correlated with other hidden factors—such as psychological or physiological differences—which exert the true causal force in each case. There are many reasons to believe that this might be so.

And it is possible, of course, that all of these conditions might be operating at the same time: elements of bias and spurious correlation, and then elements of noncausative correlation. If so, it would be very easy indeed to obtain the given survey results, with no causal connection between cigarette smoking and lung cancer or any of the other diseases.

Further, if these factors operate at all, it is likely that they would operate in all surveys of this type, thus generating the same type of results in each, and the appearance of great uniformity in this respect.

But the important fact that emerges from all this is that the smoking and health hypothesis is only one of several possible explanations of the survey data in the Surgeon General's report and, all things considered, may well be the least plausible of the lot.

In Fortune magazine (February 1964) Dr. William Cochran, the sole statistician on the Surgeon General's Advisory Committee, is reported as having expressed the view that purely statistical analysis of the problem has its limitations, and that the only way to prove that smoking causes lung cancer is to perform scientific experiments that would prove the existence of a biological mechanism. This takes on special significance when we remember that there has never been any experimental vertification of the smoking-cancer theory, and that, on the contrary, of the many attempts to induce lung cancer by smoking in experimental animals all without exception have failed.

CONCLUSION

In conclusion, it would seem fair to say that the smoking-cancer hypothesis evolves almost entirely from statistical correlation, which at best can only suggest but never prove causation, based in this instance on statistical data of highly dubious quality, collected by a variety of agencies by methods that can only be described as haphazard and unscientific.

These data, as might be expected, are internally inconsistent, lead to unreasonable implications, and are contradictory not only with only research of a competent nature, but also with other facts known to be true.

In a word, the smoking hypothesis is as weak as its evidence is shaky; and what we are dealing with is not so much scientific method as it is scientific guesswork.

Guesses may have merit, and may sometimes prove correct, but they are a poor substitute for scientific procedures, and a flimsy foundation for public policy.

All that seems anywhere near certain at this moment is that we continue to have a critical need for further research in this field. This was admirably summarized in a recent journal editorial of the Virginia Medical Society in one sentence that may also serve as an apt conclusion to this statement today:

> This [Surgeon General's] report bears out what physicians have known for a long time—namely, that the causes of cancer are complex, and the present survey has done little to clarify the subject.

Thank you, Mr. Chairman.

Mr. ROBERTS. Thank you, Mr. Donnahoe, for a most interesting statement. I congratulate you on your analysis of the Surgeon General's report, and on many of the discrepancies which I think you have ably pointed out.

Going back to page 11 of your statement, you ask the question, "What were the procedures used by the Committee in collecting data?" The answer is that the Committee itself did no original research but relied wholly on the work of others. I assume that you meant to say that what they did was to review the seven surveys that you referred to later on in that page.

Do you know whether or not any effort was made to correlate the findings with cities that are considered to have a high degree of incidence of air pollution in various parts of the country?

Mr. DONNAHOE. You mean was it reported in the Surgeon General's report as such, Mr. Chairman?

Mr. ROBERTS. Yes.

Mr. DONNAHOE. I think there was some reference to air pollution but I recall no attempt to make any such correlation analysis.

Mr. ROBERTS. As a statistician you are probably familiar with the fact that these studies have been made and have been published. We had them in some hearings but I have been unable to find them. However, I will find them. Do you have any idea from your study of this problem the extent to which such a study might be helpful?

Mr. DONNAHOE. I think it would be exceedingly helpful, Mr. Chairman. I think there is a good deal of research indicating that air pollution may be a major cause of lung cancer.

Mr. ROBERTS. One thing that was called to my attention was the mention of benzpyrene and its known effect in creating carcinogenic tumors in mice and some other types of experimental animals.

If my memory is correct this is one of the real culprits in the picture.

Mr. DONNAHOE. It may indeed be so.

Mr. ROBERTS. Mr. Springer?

Mr. SPRINGER. Mr. Donnahoe, I quote from page 18:

> In Fortune magazine Dr. William Cochran, the sole statistician on the Surgeon General's Advisory Committee, is reported as having expressed the view that purely statistical analysis of the problem has its limitations, and that the only way to prove that smoking causes lung cancer is to perform scientific experiments that would prove the existence of a biological mechanism.

What do you mean by that statement?

Mr. DONNAHOE. This is the way Dr. Cochran was reported in Fortune magazine. He was the sole statistician on this Committee. I would say, sir, as I read this report, although there was some medical evidence in the report, it certainly seems to me that the conclusion stems almost wholly from these statistical correlations. I think what

Dr. Cochran is saying here, if I understand him correctly, is that no one has ever established a biological mechanism by which cigarette smoke can create lung cancer. Nobody knows how this can be done. So this is in the area of total speculation. If somebody could say it does it in this way or with this particular compound or this particular element, then we would have something that is scientifically demonstrable. But so far as I know, and I think the report of the Committee itself indicated this, such a mechanism has never been established by scientific experiment.

Mr. SPRINGER. You mean that such things as tars and suprapyrozene, that there is none of this in the tobacco?

Mr. DONNAHOE. There are certain of these compounds. They occur, as I understand it, in very minute quantity. I think the Committee itself said this. But they have never been able to induce lung cancer in any animal by smoke, or by the inhalation of smoke.

Mr. SPRINGER. What you mean is that all they have done is introduced these toxic quantities in a whole body of an animal and that produces it but not smoke?

Mr. DONNAHOE. It is my understanding that we have some scientific witnesses who can speak with more authority on this than I can. That cancer has been induced in animals by painting the skin with certain of these compounds but it has never been induced by the inhalation of smoke itself. This is my understanding of it.

Mr. SPRINGER. There was another point you raised here and that was that you questioned whether or not in the experiment, we will say, with those people who had lung cancer, as to whether or not they were the healthy ones of the population and, on the other hand, there were those who were taken that did not die of it within the healthy part of the population.

Do you have anything to back that up?

Mr. DONNAHOE. The committee itself said—and let me say this in behalf of the committee—that if we, right here, were to be presented with seven surveys that had already been made—we had nothing to do with designing these surveys, nothing to do with carrying them out whatsoever, but the seven surveys are given to us and we must make the best of them. Really this is what it amounts to: What they found, as a matter of fact, is that in these seven surveys they had turned up with some nonsmokers who are the healthiest people anybody has ever seen. Why this is so, this committee does not know any more than we would know. All they know is that this is true and they know this is true by comparing the mortality rate in this group with the known mortality rate of the U.S. male population. This made it clear that they had a very healthy group of nonsmokers. Why they turned up with them in the seven surveys they could not answer any more than we could answer. But it certainly was a very biased group of people.

Mr. SPRINGER. Could you likewise, by the same method, prove that those who died of lung cancer were the unhealthy group?

Mr. DONNAHOE. To try to make this analytical apparatus clear, what the committee did was to take the group of nonsmokers and calculate the mortality rate of lung cancer in the group of nonsmokers and then take the smokers in the sample and calculate the mortality rate from lung cancer in the smoker group. Then they divide that

rate by the other rate. Here is an almost incredible thing to me: In this smoker group there were only 127 deaths from lung cancer.

Mr. SPRINGER. Are you talking about one survey or all seven?

Mr. DONNAHOE. All seven surveys; 127 deaths from lung cancer in the nonsmoker group. So the statisticians have to take these 127 deaths and weigh them by age in order to come up with a mortality rate for lung cancer for the nonsmoker. They admit that the entire nonsmoker sample is an exceedingly healthy sample. If they had a normal sample of nonsmokers maybe you do not have 127 lung cancer deaths; maybe you have 250. This would materially alter the conclusion in this report. Because, in effect, it is these 127 deaths that are used as a basis for estimating normal mortality from lung cancer to divide into the smoker mortality rate. So, in a sense, the entire lung cancer hypotheses in all seven studies combined can be said to rest on the evidence of 127 deaths which I, for one, find a pretty astonishing situation.

Mr. SPRINGER. You mean among the nonsmokers?

Mr. DONNAHOE. That is correct.

Mr. SPRINGER. How many deaths were there in the smokers?

Mr. DONNAHOE. The smoker sample was a larger sample and my recollection is about 1,800 in that group.

Mr. SPRINGER. How did the percentages compare?

Mr. DONNAHOE. I think the evidence indicated, on the average, about 10 times the rate among the smokers from lung cancer as compared with nonsmokers. But I point out to you, sir, that instead of the 127 deaths—and this is an admittedly abnormal sample—if there had been 250 deaths it would not have been 10 times; it would have been 5 times. That is a pretty fantastic change with 127 extra deaths.

Mr. SPRINGER. You mean if you had 250 deaths instead of 127?

Mr. DONNAHOE. It would have been 5 times instead of 10 times.

Mr. SPRINGER. There is just one further thing I would like to ask: It is my understanding that, in the scientific field, they had substantiated that this toxicity was a producer of disease. I am not talking about smoke; I am talking of toxicity of these various things that come from smoking as inhaled into the lungs. It was my further understanding that the amount of smoke that was inhaled into the lungs determined the amount of toxicity that you received in the lungs.

Are you saying that there is not a relation between the amount of toxicity in the lungs and those that do not smoke? That there is not a relation between those two things?

Mr. DONNAHOE. Mr. Springer, I guess the greatest statistician of this generation was Sir Ronald Fisher who was a professor at Cambridge University and he became quite unhappy at one of the early studies made in Great Britain on this subject which revealed that the cigarette smokers who inhaled had less lung cancer than those who did not inhale. This fact was not made generally available and he found that very disturbing.

So there has been, even in these statistical studies, some lack of coherence on this point as to whether or not inhalation was the cause.

Mr. SPRINGER. That would disturb me, too. I was under the impression from all I read that there was a direct relation between inhalation and the death rate. If you come to the question of oral cancer—tongue or mouth or cancer of the throat—there was relation be-

tween the amount of smoke. It was my understanding that there was a direct relation in these surveys between the fact that you inhaled and did not inhale.

If you are telling me in Britain where apparently the lung cancer rate, if your statement is true, is twice what it is in the United States, there must be some direct reason why it would be twice as great in Britain as it is in the United States if we are of so-called Anglo-Saxon origins.

Do you have any explanation? You covered this but you do not quite explain it. You give an inference. Are you saying that this is not explained; the fact that you have twice the rate in Britain as you do in the United States?

Mr. DONNAHOE. This is taken from the Surgeon General's report itself which points out that Great Britain has twice the mortality rate from lung cancer as the United States.

Mr. SPRINGER. I believe that to be true. What I was trying to get from you is why you believe this—or the reasons for this difference.

Mr. DONNAHOE. I think the chairman may very well have given the reason in terms of atmospheric pollution which might account for this.

Mr. SPRINGER. That again comes back to toxicity.

Mr. DONNAHOE. That is correct.

Mr. SPRINGER. So whether it would be gasoline or whether it would be coal—and I was in Britain recently and I notice they do have much more smoke than we have in the United States even out in the country for quite some way—there is more smoke coming out of chimneys than here so this might have something to do with that particular thing. This still would come back to a rate of toxicity on the lungs and what you inhale.

Mr. DONNAHOE. Let me say we have some doctors here who know much more about this than I do.

Mr. SPRINGER. You raised this question about bartenders and waiters and steelworkers. I lost you at that point because they are outdoor people.

Mr. DONNAHOE. The point that Dr. Cochran made is that nobody has established the biological mechanism. We do not know whether this is exposure of smoke to the lungs that causes this disease or not. This has never been established. An interesting fact that I might mention here, also in the committee's report, is that cigarette smokers are supposed to have 40-percent greater mortality from stomach cancer. Nobody has ever suggested that cigarette smoke gets into direct contact with the stomach. Over the years, whereas lung cancer has gone up, stomach cancer has gone down almost by the same degree.

Mr. SPRINGER. Would you repeat that about stomach cancer?

Mr. DONNAHOE. The same statistics in this report of the Surgeon General show that cigarette smokers have a 40-percent greater mortality from stomach cancer than do nonsmokers.

Mr. SPRINGER. I do not think I see the relation between that. A survey which I read about indicated that there was a relation, to some extent, and that was as to all cancer victims. In other words, there seemed to be a higher incidence of alcohol. I do not know the action of alcohol on the stomach. It might very well be related to the fact that smokers are also drinkers . I happen to know some drinkers who do not smoke at all.

On the other hand, the ones I think about do both. Maybe we are not going any place on this particular thing. I still come back to this question whether you do not believe there is a relation between toxicity and lung cancer.

Mr. DONNAHOE. I would say this is a medical question. Really what I am saying is that I do not think the statistical evidence in the Surgeon General's report permits us to draw any clear-cut conclusion as to the relationship between these things. This is the major point I am trying to make. I think their evidence is insufficient.

Mr. SPRINGER. Is it your feeling that the conclusions drawn by the Surgeon General's report are in error?

Mr. DONNAHOE. Yes, much too categorical.

Mr. SPRINGER. In other words, you believe they are much too absolute in their opinions?

Mr. DONNAHOE. Yes, sir.

Mr. SPRINGER. And the conclusions that have been drawn, you do not believe they as firmly establish the facts as the Surgeon General indicates?

Mr. DONNAHOE. That is correct.

Mr. SPRINGER. Is that your position?

Mr. DONNAHOE. That is correct. I think two members of the committee in their recent statements have indicated they are not too happy about these categorical conclusions.

Mr. SPRINGER. You come from tobacco sales territory?

Mr. DONNAHOE. Yes, sir.

Mr. SPRINGER. Do you believe that the tobacco industry itself has recognized that there is a relation between tobacco and lung cancer?

Mr. DONNAHOE. I think the tobacco industry for 10 or 15 years has been the target of a series of assaults of one kind or another based on this statistical information. I think this is an industry with consciousness of its public responsibility. I think they are doing a great deal of research. I think if there were some agency in tobacco smoke that caused these many diseases the tobacco industry would be the first to know about it and try to do something about it.

Mr. SPRINGER. Do you think they have tried to do anything about it?

Mr. DONNAHOE. I think indeed they have, sir.

Mr. SPRINGER. Would you give the committee the benefit of your views on what do you think they have done?

Mr. DONNAHOE. I think they have supported a tobacco research institute which in turn has made grants to a great many universities to carry out experimental research. I think a great deal has been done. It is my impression they have just made another grant to the American Medical Association to carry out research. It is my impression that there have been no strings attached to any of these funds. These are simply moneys that are distributed.

Mr. SPRINGER. That is one. Could you give me another?

Mr. DONNAHOE. I think in the Medical College of Virginia in the city of Richmond, research has been going on for years supported by the tobacco industry.

Mr. SPRINGER. Now will you give me a third one?

Mr. DONNAHOE. There are other witnesses here who could tell you much more about it than I can. I am not a representative of the tobacco industry. I am here trying to represent the public.

Mr. SPRINGER. I am not trying to pin you down on this. It seems to me that the greatest recognition given by the tobacco industry is that there probably is some truth or possibly there is some truth of the relation between the fact that there is inhalation of smoke and cancer. You have not mentioned that one at all. This is the most obvious one. They have already recognized that there is probably some truth in this by going to the filter. For what purpose?

Mr. DONNAHOE. Mr. Springer, let me try to make myself clear because I do not want to be as categorical as the Surgeon General's Committee. I think that would be a great mistake.

Mr. SPRINGER. I understand.

Mr. DONNAHOE. I think certainly inferences have been raised not just by this report but over a period of years that there may be some injurious quality in tobacco smoke. I say inference. This is a very different thing from an established theory, in my opinion. I would say right now on the basis of the evidence, as inconsistent and contradictory as it is, that a person would be foolish not to say that inferences are raised.

On the basis of these inferences certainly there ought to be continued scientific experiment of all kinds trying to determine whether these inferences are correct. The tobacco industry I think has taken account of those inferences. Whether or not these filters are meaningful is quite beyond me because I am not a scientific expert in this field at all. I do not think this is an admission. This is simply a recognition of inference and hypothesis which is sensible.

Mr. SPRINGER. I always believed industry that have come before this committee. I am a veteran of some 14 years on the committee. Every industry that has ever come before it has always pointed out to us the things they have done to remedy a situation. The tobacco industry, as big and important as it is in the economy of this country, spends millions of dollars each year on advertising and in the ones that I get on my TV every night, they do not advertise much about the cigarette except the filter and how much better their filter is than the other fellow's filter. In fact, most of the information I have seen in this field—I am not a cigarette smoker, I might say—is that they are attempting to do something about this and they are advertising the fact that their filter has charcoal in it.

I do not know how many filters there are. Another has a spin filter and that takes everything out. There is only one cigarette which, as far as I know, that says, "All we have is a good smoke and that is the Camel," as I recall.

I am trying to come back to the fact that it seems to me unless there was some information here which is of tremendous value to the tobacco industry they would not be taking all of these ads. I suspect they are spending as much money on advertising on the question of filter today as on the question of smoking. The question is: Is it safe? I think probably this propaganda has had some effect. One of my daughters has stopped smoking since all this came out last year. It affected her that much, the one member of my family that does not smoke any more that used to.

So I think this whole question of proper information is a good one. I think maybe what you are presenting to us is another side. I am sure glad to have it. I did want to point out to you what the tobacco

industry, in justification, was attempting to do, as a result of this survey which had been made, and whether there was any biological experiment on the part of the Surgeon General's Committee, at least he has revealed all the information they do have in the seven surveys.

May I say I appreciate the statement you made. I think it is very thorough and very good and well presented.

Mr. DONNAHOE. Thank you, sir.

Mr. ROBERTS. Mr. Rogers.

Mr. ROGERS of Florida. Mr. Donnahoe, I have been interested in your statement and questioning some of the findings that have supposedly been made. I wonder if the discrepancies that you brought out in the statistical data were brought to the attention of the FTC during their hearings?

Mr. DONNAHOE. Not by me, Mr. Rogers.

Mr. ROGERS of Florida. Would you have any knowledge whether it was brought to their attention by the cigarette industry or tobacco industry?

Mr. DONNAHOE. It is my impression that it was not. I would like to make my position clear in this matter. I am not here speaking for the tobacco industry. The tobacco industry is important to our city and State but I am in no sense a representative of that industry. I am here speaking for the public. I really did not know that the Federal Trade Commission was having this hearing. I think had I known it I would have volunteered to make a statement before them. I simply did not know—obviously ignorance on my part.

Mr. ROGERS of Florida. Do you have any stock in any tobacco companies?

Mr. DONNAHOE. No, sir; I do not.

Mr. ROGERS of Florida. I notice that over the weekend, the American Medical Association adopted a resolution saying in effect that it recognizes a significant relationship between cigarette smoking and the incidence of lung cancer and certain other diseases and that cigarette smoking is a serious health hazard.

It commended the Surgeon General on its report and called for further research and educational program. Also, I noticed in testimony by the industry before the committee that they had suggested a cigarette advertising code. On page 4 of that proposed code they say that cigarette advertising shall not appear on television, radio programs, directed primarily to persons under 21 years of age and so forth.

In other words, saying that there should be no appeal to young people to begin to smoke. The only question that comes to mind is that the industry itself has adopted this position, that it is not advisable to appeal to young people to smoke.

The Surgeon General, after some period of time, has come out with a proposed suggestion that there is some relationship to cancer. Now the American Medical Association comes out.

The Federal Trade Commission has already taken some action. The Congress itself is trying to go into the problem thoroughly and certainly your testimony is helpful. But with all of this background, do you still seriously feel there is no relationship?

Mr. DONNAHUE. I feel, Mr. Rogers, this evidence is not the kind of evidence that would make anybody happy. It is too full of contra-

dictions and inconsistencies. It does, nevertheless, raise inferences and to say there is no inference, no possibility of a significant relationship, is more than I would like to say. What I am trying to say is that it has not been firmly established in my mind.

Mr. ROGERS of Florida. Let me ask you this: Do you feel that the Congress should take any action in this field or leave it to the Federal Trade Commission or Food and Drug, or what is your feeling about this?

Mr. DONNAHOE. Again I certainly cannot speak for the industry in any sense.

Mr. ROGERS of Florida. I understand.

Mr. DONNAHUE. I must say I was here last week and was rather startled to hear that the Federal Trade Commission had so quickly and to my mind, precipitously decided to preempt this field.

I think the public does not understand this report. I do not think they understand the qualifications attached to the conclusions. I think this action on the part of the Federal Trade Commission was precipitated and unjustified. What the remedy for that is, sir, I cannot venture to say. But it is to my mind a very unhappy situation that the FTC has acted in the fashion that it has. That is my personal opinion about it.

Mr. ROGERS of Florida. Thank you.

Thank you, Mr. Chairman.

Mr. ROBERTS. The gentleman from California, Mr. Younger.

Mr. YOUNGER. Thank you, Mr. Chairman.

The Surgeon General when he was here made the statement that we do believe, however, that we should be given authority to require disclosure of information on such ingredients by manufacturers in order to facilitate needed research on these ingredients to aid in explaining the need, if any, for regulation of such ingredients.

I think one of the most perplexing questions about this whole matter is to hold that tobacco itself is not injurious. Such is the holding, of the Federal Trade Commission. No one, in their surveys, seems to have tested or even tried to find out what the ingredients in cigarettes are that are different than tobacco, or how they are mixed. When Mr. Bowman Gray was here, from Reynolds, I asked him whether the Surgeon General had asked for the ingredients. He said, "no request had ever been made." That is one of the confusing things about this whole process, as to whether or not the mere fact of taking tobacco and mixing it with another ingredient and wrapping it in paper makes it any different from a pipe or cigar.

Do you have any comment on that?

Mr. DONNAHOE. Mr. Younger, it is indeed to me a strange piece of ignorance on the subject.

Mr. YOUNGER. Mr. Gray said that if the Surgeon General had asked for the ingredients he would give them to him, although it is a trade secret which they are reluctant to disclose. As pointed out by the chairman, there is a penalty for anyone in Government service to give out information obtained in such a survey.

So that the industry would be protected so far as their trade secrets are concerned. That certainly leaves a tremendous loophole in my mind as to what we are trying to get at and why that survey was not completed. Apparently, it was not.

Mr. DONNAHOE. Mr. Younger, I think that is one of the really disturbing paradoxes in this report. There is a great mass of statistical evidence which has no relationship to any physically known phenomena of any kind. This really is the evidence on which the conclusions were based. Whereas when you go back to the attempt to find scientifically how any type of tobacco can cause lung cancer there is nothing but negative results. There is nothing to pull these links together.

Mr. YOUNGER. You make the statement that if you had known that the Federal Trade Commission was holding hearings you would have made a statement. I doubt if it would have been received or that it would have had an effect on their decision because Mr. Dixon made the statement that they accepted the report of the Surgeon General's Committee as firm and they took no evidence or went behind that. They just accepted it. They proceeded from that standpoint as to the advertising and labeling.

Mr. DONNAHOE. Mr. Younger, on that very point it seems to me an interesting thing which the public simply does not understand: Dr. Berkson, of the Mayo Clinic, who probably is the most distinguished medical statistician in America, has published numerous articles in times past pointing to the same type of deficiency that I have mentioned here.

To my knowledge, there has never been a single rebuttal of a single thing that Dr. Berkson has ever said in any official publication in the American Statistical Association. It is therefore very difficult for me to understand the Federal Trade Commission deciding that the conclusions of this committee, which included eight doctors, one chemist, aned one statistician, represent the final word on the subject.

I might say that 1 week from the time this report was published I published an article in the Richmond Times-Dispatch which contained much the same material that I have given you today. A copy of that article was sent to the Surgeon General by our managing editor who solicited any comment he would have to make on it. He replied that the points that were made in this article, and I have made today in this statement, were recognized by the committee itself and that the committee had pointed them out; that the committee fully understood there would be many people who would disagree with its conclusions. and it was to be hoped that these disagreements would be published in the scientific journals to further clarify the subject.

In brief, I think there is no question about a single statement that I have made to you today. I say again in view of that it is difficult for me to understand how this document can be taken as the equivalent of Biblical authority on the subject.

Mr. YOUNGER. Thank you.

Mr. ROBERTS. Thank you. The gentleman from North Carolina.

Mr. KORNEGAY. Thank you very much, Mr. Chairman.

Mr. Donnahoe, I want to thank you most sincerely for a splendid statement here this morning. It is obviously a product of a great deal of study and research into the Surgeon General's report, as well as being highly complimentary of the expertise which you possess in the field of statistics.

You made a very valuable contribution to this committee in its deliberations and I want to commend you very highly for it, sir.

Mr. DONNAHOE. Thank you, sir.

Mr. KORNEGAY. I was happy that you did bring out the fact that you are not related in any way, shape, or form to any tobacco company and own no tobacco stock and have no more interest in this matter than an ordinary citizen who recognizes the importance of the tobacco industry to this country.

Mr. DONNAHOE. That is correct, sir.

Mr. KORNEGAY. And, you further recognize the fact that the tobacco industry stands in serious jeopardy. I do not have any questions that I want to ask you about your statement. I think it is direct and to the point and very graphically points out the fallacies and inconsistencies in the Surgeon General's report. But I do want to say to you, if it will salve your conscience, it is just as well that you did not go and testify before the FTC. If you are chagrined about the fact that you did not go, let me put your mind at ease by saying I do not think it would have done much good if you had gone. They have testified that the report to the Surgeon General was the basis for the decision and it did not make much difference what anybody might come down and say about it. I did want to say that.

I am very sorry that Mr. Dixon, the Chairman of the FTC, was not here to hear you testify. I am equally sorry that the Surgeon General was not here.

Mr. Chairman, I would like to ask that the committee forward to those two gentlemen a copy of Mr. Donnahoe's statement.

Mr. ROBERTS. I would like to say to the gentleman that I am not in control of the hearing as the gentleman knows. My idea is that we request the Surgeon General to come back to the committee and possibly some other high level Government witnesses. I think in view of the testimony they should come back and answer some of the questions.

Mr. KORNEGAY. I am in complete agreement with that statement.

Mr. WATSON. If the gentleman from North Carolina will yield for one comment, you said that the Chairman of the Federal Trade Commission had accepted the Surgeon General's report as his Bible, and apparently he did in every respect except one.

The Surgeon General recommended that the matter of labeling could be more effectively handled under the Department of Health, Education, and Welfare. However, the Chairman of the Federal Trade Commission did not accept that as Biblical authority because he, himself, decided the Federal Trade Commission, as you say, would act precipitously and issue this order.

So when it came to the authority he himself wanted to assume he did so, but in other aspects he would follow the recommendations of the Surgeon General.

Mr. KORNEGAY. That is a good point. I appreciate your making that point. Your emphasis on research is extremely well taken, Mr. Donnahoe.

Mr. DONNAHOE. Thank you.

Mr. KORNEGAY. All the Surgeon General's report appears to be is a compilation of statistics. There was quite a famous statistician down home who said—and I do not mean this is any disrespect to you or your profession—"there are liars, damned liars, and statistics."

With that I will conclude. Thank you, Mr. Chairman.

Mr. ROBERTS. The gentleman from Nebraska.

Mr. CUNNINGHAM. Mr. Donnahoe, I found your statement very interesting. I think for the record, I should say that it is my understanding that you are not here to pass on whether or not there is conclusive medical evidence as to the dangers, if there are any, of cigarette smoking. You are here in your capacity as a statistician and to point out the many errors in this report. That is the real purpose of your presence here today.

Mr. DONNAHOE. To point out, yes, sir, that the evidence does not seem to justify the categorical conclusions in the report.

Mr. CUNNINGHAM. In other words, there are some questions that indicated whether you thought it was dangerous to smoke or not dangerous to smoke and this is not your position.

Mr. DONNAHOE. There are others here to speak on this.

Mr. CUNNINGHAM. Your position is to point out as a statistician and a newspaperman, but primarily in this instance as a statistician, the statistical faults as you see them in this report.

Mr. DONNAHOE. Yes, sir. And the fact that the report seems to be based primarily on statistics rather than medical evidence as such which makes this a critical conclusion.

Mr. CUNNINGHAM. Then with reference to my colleague from Illinois—about advertising, about filters and the money that the industry is spending, it is not your view, is it, that because they are advertising filters and spending money on research, that they feel their product is dangerous; but because the public through certain information or misinformation has been led to believe that cigarette smoking is extremely dangerous and the industry to protect itself has been forced into this position.

Is that a correct statement?

Mr. DONNAHOE. That seems to me to be a very good statement, sir.

Mr. CUNNINGHAM. Thank you very much.

Mr. ROBERTS. I thank the gentleman. I note the presence of the gentleman from Kentucky, Mr. Chelf. Do you have any questions?

Mr. CHELF. You are very kind, Mr. Chairman, but I would not be so presumptuous as to ask any questions. I can say this, I was not able to be here earlier. I wish it were possible that I could be. We were holding hearings in our own subcommittee and hearing Members of Congress and I have been deprived of the opportunity to hear the gentleman who is now the witness.

I can say to you, sir, that I have been hastily reading what you have said and I buy every bit of it.

Mr. DONNAHOE. Thank you, sir.

Mr. CHELF. I am with you all the way.

Mr. KORNEGAY. Amen.

Mr. CHELF. Amen. Thank you, Mr. Chairman.

Mr. ROBERTS. The gentleman from Colorado.

Mr. BROTZMAN. Thank you, Mr. Chairman. It has been quite a while since I took any courses in statistics, but I just wanted to ask you this question: If I understand, Mr. Donnahoe, from your study of the report it gives rise only to an inference; is this correct?

Mr. DONNAHOE. At the most, in my opinion.

Mr. BROTZMAN. In the terminology of statistics, is this related to what we call an inference in the law? I am trying to find out how much weight there is to an inference.

Mr. DONNAHOE. I would call it not so much an inference as an unvalidated hypothesis. I think this is the way statisticians look upon it. It raises the need for inquiry, that is all.

Mr. BROTZMAN. In other words, it is something more than coincidence?

Mr. DONNAHOE. I think I would describe it as phenomenon that can be explained on the basis of something other than the smoking answer hypothesis. It can be explained on the basis of spurious correlation, or noncausative correlation.

There are other explanations for these statistical data. I would say this, to give this committee a little clearer grasp of the problem. The Census Bureau publishes every month a sample survey of the United States of various and sundry facts. You will always find in that report a section in which they describe sampling error: That is to say, what kind of significance attaches to any result in the report. This is standard procedure in any U.S. Government statistical work.

If you do not put down the sampling error, you are not letting the reader have any grasp of how reliable the findings really are. If you read the Surgeon General's report you will find no such error limits mentioned in that report, for the very simple reason that these were not probability samples from which error limits can be derived. This is a very flimsy foundation from a statistical viewpoint. But even if these materials were correct, even if you assumed that these findings were correct, you would still have no proof of causative correlation. You would still have in that case perhaps a stronger inference but you would not have proof.

This report is deficient on both counts, in my opinion. It starts off with material that is unscientific and then on the basis of the unscientific material and on the basis of correlation analysis it arrives at conclusions that would not be justified even if you had good material to start with.

The rather incredible thing to me is that this is not understood at all by the public at large. I repeat, these criticisms have been made in the journals of the American Statistical Association and have never been rebutted, to my knowledge.

I find this a very strange kind of document to be issued by the U.S. Government.

Mr. BROTZMAN. I think you maybe partially anticipated my second question. I looked over your qualifications rather quickly. I do appreciate witnesses who tell us something of their qualifications.

Have you discussed your analysis of this report with other people competent in the area of statistics?

Mr. DONNAHOE. This article that I wrote, roughly 1 week after the Surgeon General's report was issued, was reproduced, not by me. It was distributed very widely throughout the United States. As I said, we immediately sent a copy to the Surgeon General himself and received no criticism from him whatsoever. Had he made any comment, we would have published that in equal space. I do not know how many thousands of copies have gone out all over the country. Certainly many statisticians have seen it. I would guess that 400,000 adults were exposed to it in the Richmond Times-Dispatch, including many, many doctors and statisticians and scientists.

The rather astonishing thing to me is that I have to this date to receive one word of criticism of any statement that was made in that article and substantially what has been made in this statement to you today.

I do hope the Surgeon General comes back to speak to this committee. I do hope he has an opportunity to read this statement. I do hope he has an opportunity to comment on this statement because I think it would be fascinating to hear what he has to say about it.

Mr. BROTZMAN. I am more interested in having you direct your attention, shall we say, to the science of statistics for the moment. This is what I am asking you about. I will add this question: Have other prominent statisticians or those who are qualified in this particular area evidenced agreement with your critique on this subject?

Mr. DONNAHOE. I think this, Mr. Brotzman: Statisticians are pretty busy people. I do not think many have taken the time to read the Surgeon General's report. It is a very unpleasant document to read and very difficult and laborious. I think the greatest opportunity for statisticians to look into the question has been in the form of these articles in the Journal of American Statistical Association over a period of several years by Dr. Berkson who the American Cancer Society refers to as probably the most eminent medical statistician in America. He published much I said here. He anticipated much the Committee concluded because he knew the evidence that it was based on.

This has been published in some detail in these journals at various and sundry times. I have one of his articles with a long bibliography. So professional statisticians have been exposed to this for a good many years.

I repeat I have never seen a rebuttal of this in any journal of the American Statistical Association. Statisticians are very quick to point out criticisms of material published in that journal if they do not like it.

So I would infer that these criticisms are considered sound by most professional statisticians.

Mr. BROTZMAN. You will have to refresh my recollection on one thing here very briefly. Was there a statistician working for the President's Advisory Committee and seeking to correlate and analyze the material?

Mr. DONNAHOE. On the Committee itself?

Mr. BROTZMAN. Yes.

Mr. DONNAHOE. There was one statistician. This is Dr. William Cochran. There was one chemist and I believe eight doctors as I remember. That was the composition of the Committee, as I remember. I repeat, Dr. Cochran in this article published in Fortune this year has indicated that he might have some misgivings about these categorical conclusions.

Mr. BROTZMAN. Were any of those misgivings stated in the report itself?

Mr. DONNAHOE. I think they were. I think they were stated in language that only statisticians understand. I think it is a little hard for other people to quite grasp them. For example, this statement of the Committee, that it was not clear which population, if any, these surveys were designed to represent, and that to project the results to any known population involves an element of unverifiable judg-

ment: to a statistician this is very strong language. It is a major qualifier. This is the first effort in all survey work, to know the population that the sample is supposed to represent.

When you say you do not know this population, and that to project results to any population involves unverifiable judgment, that is very strong language to a statistician.

Mr. BROTZMAN. Are you acquainted with Dr. Cochran?

Mr. DONNAHOE. I have never met the gentleman. I read his book and he has published a very fine book on sampling that I have quoted here.

Mr. BROTZMAN. What would you state his qualifications generally are in the area of statistics? Do you know if he is considered to be well qualified?

Mr. DONNAHOE. Eminently qualified. No question.

Mr. BROTZMAN. Thank you very much for your consideration; that is all I have, Mr. Chairman.

Mr. ROBERTS. The gentleman from California.

Mr. VAN DEERLIN. Mr. Donahoe, you have certified that you do not speak for the cigarette industry. Heaven knows I don't speak for the Federal Trade Commission. But it seems to me that the Federal Trade Commission, faced with the report that it had received from the special study conducted by the Surgeon General, may have felt that it had no choice but to proceed with action carrying out the findings of that report. Just as you or I, if told by the doctors that there are certain dangerous trends in the condition of one of our parents, although we are not doctors ourselves, we are compelled to take some action in the matter.

As a statistician I wonder if there is some procedure which you would find it possible to approve and whose findings you would be inclined to accept as a supplementary effort to get at the facts in this very controversial area. How long you think such a competent study might take and how we might proceed from this point forward. There is a decision that not only members of this committee will have to make, but Congress as a whole will have to make.

I can assure you, despite the friendly reception you have received by members of this committee, that there will be pressures upon Members of Congress if there is much dillydally in this matter, or if there is a conspicuous effort to obstruct the efforts of the Government agencies in this field.

Mr. DONNAHOE. Mr. Van Deerlin, as I tried to say a moment ago I think there are two problems here. Problem No. 1, we are dealing clearly with deficient statistical information. I think any statistician will tell you this without any question. So you would have grave doubt about extending these results to come to any firm conclusion. So this is a problem in itself. I am going to come back to this in a minute. But let us go on to the second problem. Even if you had the finest statistical information in the world proving correlation between some disease and smoking, let us say, you would still not have a proper scientific basis for saying that a causal connection existed between the two.

May I illustrate this with an example? I notice from the American Medical Association convention last week a statement, and it may be the doctor will speak to you later on this subject, that stress seems

to be a major factor in the case of heart disease, not smoking. Let us assume, for a moment, that this is so. It is very easy to understand, it seems to me, that people who are under stress are more likely to smoke cigarettes than people who are not. It may be, therefore, that you would have more heart disease among cigarette smokers than people who do not smoke cigarettes.

Yet it is also possible that if they did not smoke cigarettes they would have even more stress and there would be even more heart disease. You see the problem here. Even though in this case you establish absolutely and definitively that the correlation existed, you would not prove that cigarette smoking caused heart disease. On the contrary it might literally save a great many people from dying from heart trouble.

Mr. VAN DEERLIN. We might have to settle for a little lung cancer in order to curb the heart disease.

Mr. DONNAHOE. Yes, sir. I have operated under stress for a good many years. I smoke a great many cigarettes as you see. I have neither heart trouble nor an ulcer. It may help. I don't know. Going back to the first question. It would be helpful in my opinion to get statistics—statistical data on this question—that somebody might believe. I think it would have been much more profitable had the Surgeon General's committee said we are not going to deal with this inaccurate material that is available to us. It is much better for us to undertake a proper type of statistical study. Maybe it takes 3 or 4 years. At least we eliminate errors existing in this other material.

Mr. VAN DEERLIN. You cited one. Members of the American Legion in California. Obviously if you are a member of the American Legion you have at sometime in your life passed the military induction physical, which is a fairly comprehensive physical examination. So this automatically eliminates the 40 percent who don't pass the Army physical.

Mr. DONNAHOE. Exactly.

Mr. VAN DEERLIN. I would see a big hole in the findings.

Mr. DONNAHOE. Exactly.

Mr. VAN DEERLIN. What I would be interested in learning is what kind of massive study could be undertaken with the approval of experts like yourself that would have validity and whose findings in advance you would find it possible to accept, subject to all human frailty, as the most valid conclusions in this very touchy area.

Mr. DONNAHOE. The criteria for scientific sampling are very well known in the Federal Government. You have some of the finest statisticians in the Bureau of the Census. It is quite feasible for statisticians to design an adequate sample and do what these seven studies undertook to do but do it scientifically. The point I am making is that though this were done you would not solve the real question—have the final answer. You would simply be rid of these doubts about the validity of the statistical data. If given my way I would like to see research proceed in both direction to gather adequate precise scientific statistical data, to see whether we are really dealing with sensible inferences and hypotheses, and No. 2—and this by all odds the most constructive and meaningful—to extend scientific experimentation to find the biological mechanism. Because this has to be the final answer in order to do something about it.

Mr. VAN DEERLIN. Do you think these medical studies would be more acceptable if they were financed by the U.S. Government rather than financed by the cigarette industry?

Mr. DONNAHOE. It is my impression and other witnesses can speak with authority because I really don't know, that grants that have been made on this subject to universities and other research centers have been totally without strings of any kind: this is x dollars that is available to you, you do the research and you publish the results. We have nothing to do with it. Under those circumstances, it seems to me that is a very scientifically valid procedure.

Mr. VAN DEERLIN. It is surely an important enough field that the expenditure of public funds could be justified.

Mr. DONNAHOE. I would have no objection to it, sir. Indeed I wouldn't.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. ROBERTS. The gentleman from South Carolina.

Mr. WATSON. Thank you, Mr. Chairman. I also would like to commend the witness on a very persuasive and I think a very plausible argument. Here I might say, so far as a matter of your failure to testify before the Federal Trade Commission, I recall a statement that I heard at one time. I am afraid you would have fallen into that category, notwithstanding your articulation and persuasiveness. I read a statement once where a man said, don't confuse me with the facts, my mind is already made up. I dare say that probably would not have been too effective before the Federal Trade Commission.

One thing is interesting to me. On page 10 you state that only 15 to 20 percent of the excess lung cancer deaths among cigarette smokers were attributable to cigarettes, whereas about half the excess deaths are to be found in heart disease. To what do we owe the committee's motivation to go out and run down the rabbit instead of shooting at the bear?

Mr. DONNAHOE. This is a thing that has also puzzled Dr. Berkson and it puzzles me. If we are to accept the evidence before this committee, cigarettes represent a far greater destructive force than the committee indicates; apparently it causes you to die from almost every disease known to mankind. Now the thing that puzzled the committee is that they could find no possible biological basis for drawing that sort of inference. Indeed in the case of the heart disease my recollection of the committee report is they did not say there was a causal connection between heart disease and cigarette smoking, although the statistics show that one-half of the excess deaths are in that category.

This is an almost incredible finding, Mr. Watson, and I have seen no explanation for it.

Mr. WATSON. Could it possibly be explained in the fact that we set out to look at cigarettes and their relationship to cancer rather than to look at cigarettes and their relationship to heart disease? As a consequence everything set out on that particular course and we were not going to be diverted by something even more serious nature to the health of the American people.

Mr. DONNAHOE. I think we reach the point where conclusions just plain cease to be plausible at all and lines have to be drawn. I think

if you drew the complete deduction that could be drawn from these statistics you would end up with conclusions that would be ridiculous on their face.

Mr. WATSON. I do not know the sequence of the various surveys that were made. You list some seven groups that studied this problem. They were the basis upon which the Surgeon General compiled his report. Could a possible factor be that one group determined that there was a casual connection between lung cancer and cigarettes and that the other group is subsequently following the human tendency of corroborating the earlier report?

Mr. DONNAHOE. I think scientists may sometimes have a little prejudice and then find it a little easier or to read evidence in favor of that prejudice than otherwise. I think it is possible.

Mr. WATSON. I have one final question. On page 19 within one of your conclusions you stated that the variety of methods used to compile data and so forth can best be described as haphazard and unscientific. What would have been more acceptable and proper methods of ascertaining these figures?

Mr. DONNAHOE. The standard method of sampling is, No. 1, to determine what population you are trying to measure. For example, in this case what the committee hopefully was trying to do—to measure—was the impact of cigarette smoking on the entire U.S. male population.

That is what we—what they were really trying to do. If this is what you are trying to do then you should choose your sample in such a way as to represent the U.S. male population. The one thing you do not do, as was done in the two American cancer studies which represent 57 percent of the total cases in all 7 surveys, is to tell a volunteer, you go out among people you know and you pick 10 of your acquaintances who are willing to volunteer in the survey. When you do that, Mr. Watson, you haven't got the slightest vestige of scientific sampling. What you must do is select a group and you do this by predesignation of one form or another of the population you are trying to measure and you measure this group and you resort to every method you can to see that they are measured. For example, in my organization we run statistical surveys as a matter of routine. We preselect the people we are going to reach. We will make up to six recalls to reach those people. It is far better to reach 90 to 95 percent of the people that you are supposed to reach, having predesignated them, and yet say a thousand cases of this type: this is a far better sampling than to get 100,000 cases if you have missed 40 percent of the people you should have gotten in the first place. In other words, you must first determine what is a representative sample and predesignate the individuals you are going to get and then you must spend great effort and money to get returns from all these people. It is cheap research to get a lot of cases but just let them come as they may.

It is like standing out on the corner here and asking people their opinion about some piece of legislation in the House. This would not be a very scientific way to get that opinion.

Mr. WATSON. Not only in your opinion, but in the opinion of the committee itself, they did not follow such procedures as you outlined a moment ago.

Mr. DONNAHOE. No, sir; indeed they didn't.

Mr. WATSON. So your basic position is that we should defer action on that matter, or action should have been deferred, until such time as we could have both a figure or statistical survey properly done, as well as, most importantly, a medical or scientific study made to ascertain the substances which may give rise to a causative connection between cancer and cigarettes?

Mr. DONNAHOE. Precisely.

Mr. WATSON. Thank you.

Mr. ROBERTS. Thank you, Mr. Donnahoe.

Mr. WATSON. Thank you, Mr. Chairman.

Mr. ROBERTS. We appreciate very much your appearance here. If you have any doubts as to how interesting you were, if you take any pride in this fact, you can know that you occupied the whole morning.

Mr. DONNAHOE. I am very grateful to the committee, sir.

Mr. ROBERTS. The committee will be in recess until 2 this afternoon in the same hearing room, provided the chairman is able to get permission to sit.

(Whereupon, at 11:50 a.m., the committee recessed, to reconvene at 2 p.m. the same day.)

AFTER RECESS

Mr. ROGERS of Florida (presiding). The committee will come to order, please. Our first witness this afternoon will be Thomas H. Burford.

STATEMENT OF DR. THOMAS H. BURFORD, SURGEON, CHIEF OF THORACIC AND CARDIOVASCULAR SURGERY, BARNES AND ALLIED HOSPITALS, ST. LOUIS, MO.

Dr. BURFORD. Mr. Chairman, members of the committee, I appreciate the opportunity of appearing before you. I apologize for what may turn out to be a hoarse voice later, not due to smoking, but due to the "flu."

I am Thomas H. Burford of St. Louis, Mo. I am a doctor of medicine specializing in thoracic surgery. I am professor of thoracic surgery at Washington University in St. Louis and was a founder member of the board of thoracic surgery. Since 1945 I have been chief of the chest surgical service at Barnes Hospital and the Washington University School of Medicine in St. Louis. From 1946 until 1954, I was associate chief under Dr. Evarts Graham, who was a pioneer in the surgical treatment of cancer of the lungs.

A detailed list of my qualifications is attached to my statement filed with the committee.

My major interest has been the diagnosis and treatment of lung cancer. My experience in the field has been significant. I have seen and treated over 4,000 cases of lung cancer during this period. I am not a cancer researcher, and I am not a statistician. My opinions are based on a large clinical experience, on a thorough study of the scientific literature pertaining to lung cancer, and on an objective evaluation of published research and statistical studies.

I do not believe that lung cancer is caused by cigarette smoking and I do not believe that smoking is responsible for any shortening of life.

The oft-quoted statistics purporting to prove that smoking does cause lung cancer or does shorten human life have done nothing more than perhaps establish certain statistical associations which fall far short of proving a causal connection.

Cancer is profound biologic phenomenon and it is my opinion that cancer is the same disease and is very probably caused by the same agent or agents regardless of what organ it affects. It is stretching credulity beyond reason to believe that the aforementioned statistics and these associations have been responsible for discovering the causes of disease that have thwarted the efforts of the best investigators for generations.

Cancer of the upper windpipe or trachea is one of the rarest diseases and yet the upper windpipe, which receives a greater exposure to tobacco smoke than the other parts of the windpipe, is the same from the structural and the microscopic point of view as the other major windpipes, including the major bronchi where most lung cancers are said to develop. This is a definite inconsistency and one that looms very important, in my mind at least, in the whole program of lung cancer.

In the earlier studies alleging statistical association between smoking and cancer of the bronchus it was claimed that cancer of the bronchus occurred in descending order of frequency from the main to the smaller branches. A recent important study has shown that many tumors ostensibly primary in the large bronchi have actually arisen in a smaller more distant bronchus and involve the larger one by direct extension. Many of us are now convinced that the majority of cases of lung cancer arise in a small bronchus rather than a major bronchus. This is the same type of inconsistency as the rarity of cancer in the upper windpipe since the smaller bronchi have little, if any, exposure to cigarette smoke. This also tends strongly to refute the cigarette-cancer causation theory.

A further reason for my disbelief is that I have found no really convincing evidence that the incident of lung cancer is actually increasing although cigarette consumption has been rising for several decades. When one considers the fact that in 1940 methods of diagnosis, and I participated actively in this era, were far less well developed than they are at the present time, and even those that were well developed were not exploited, the increase in lung cancer can be explained in part at least by the fact that a diagnosis of cancer is thought or in every case of chronic lung disease and all diagnostic methods are fully utilized. Post mortem examinations today are carried out in a far more careful and meticulous fashion than they were two decades or even one decade ago resulting in more frequent discovery of lung cancers.

Another factor that contributes to the apparent numerical increase in lung cancer is the continuing lengthening of the life span of the human. More people are living to reach the older ages when cancer strikes than was true even a decade ago. This very important factor has been ignored by the investigators who have attempted to prove the connection between cigarette smoking and lung cancer.

Careful study of the literature will reveal that many thoughtful studies by competent people concur in this opinion that the cause of lung cancer, or for cancer in any organ is unknown. Without needlessly belaboring the issue it is obvious that there is a large volume of

good scientific evidence which tends to refute the premise that cigarette smoking is causally related to cancer of the lung.

Of great importance is the increasing number of reports which tend to associate lung cancer with air contamination by the fumes of the internal combustion engine. It seems to me that any unbiased examination of the world's scientific literature will conclude that there is as much or more reason to suspect air pollutants as there is to suspect cigarette smoking.

It is fair to say that more and more competent investigator who previously manifested little interest in the problem have developed interest and are beginning to publish more and more significant studies contradictory to the causation hypothesis. It would be possible to cite many more reasons why this hypothesis is not scientifically sound. It sufficies to say that in my opinion and in the opinion of many excellent, highly qualified investigators the cause of cancer in general and of lung cancer in particular is not proven.

Many of us feel that cancer will eventually be proven to be due to a virtue or virus-like substance and that it will very probably require a very special set of circumstances within the host for the cancer to develop. So long as the cause of cancer is unknown it would seem only reasonable that to raise an alarm about cigarette smoking is unwarranted.

(The documents referred to follow:)

CURRICULUM VITAE OF THOMAS HANNAHAN BURFORD

Born: New Franklin, Mo. December 23, 1908.
Education:
A.B., University of Missouri, 1931.
B.S., University of Missouri, 1933 (in medicine).
M.D., Yale University, 1936.
Graduate hospital clinical experience:
Intern, St. Louis University Group, 1936–37.
Intern, Barnes Hospital, 1937–38.
Assistant resident, Barnes Hospital, 1938–40.
Fellow in thoracic surgery, Washington University, 1940–42.
Academic positions:
Associate professor of surgery, Washington University, 1946–50.
Professor of thoracic surgery, Washington University, January 1, 1951.
Chief, thoracic and cardiovascular surgery, Barnes and allied hospitals.
Hospital appointments:
Associate surgeon, Barnes Hospital and St. Louis Children's Hospital.
Attending consultant surgeon in thoracic surgery:
Robert Koch Tuberculosis Hospital.
St. Louis City Hospital.
Homer G. Phillips Hospital.
Area consultant in thoracic surgery, Veterans Administration, area 9.
Staff member, Jewish Hospital (also associate in thoracic surgery on ward service staff).
Consulting staff in surgery, St. Luke's Hospital.
Medical service consultant, U.S. Air Force Hospital Scott.
Consultant thoracic surgeon for:
Frisco Hospital Employees' Association.
Missouri Pacific Hospital Employees' Association.
Wabash Hospital Employees' Association.
Licensure: Missouri, 1937.
Certification: American Board of Surgery, 1943.

Founder member, the board of Thoracic Surgery, 1947.
Military service: Army, United States, December 24, 1941, to October 10, 1945.
Membership in societies:
Diplomate, American Board of Surgery.
American College of Surgery.
Board of Thoracic Surgery—Founder Member and Member of the Board, 1947–1956.
Southern Medical Association.
American Association for the Surgery of Trauma.
American Association for Thoracic Surgery.
Excelsior Surgical Club.
National Trudeau Society, Missouri Chapter.
Sigma Xi.
American Medical Association.
Missouri State Medical Association.
St. Louis County Medical Society.
American Association for the Advancement of Science.
St. Louis Heart Association.
Western Surgical Association.
American Surgical Association.
Society for Experimental Biology and Medicine.
Society of Clinical Surgery.
Society of Vascular Surgery.
American Association of Trauma.
St. Louis Surgical Society.
Honorary degrees, special lectures, medals, awards, and distinctions:
Clarence M. Jackson Scholarship in Anatomy, University of Missouri.
Legion of Merit, World War II.
Honorary consultant, Los Alamos Medical Center.
Positions on editorial boards:
Associate editor, the Journal of Thoracic Surgery.
Acting editor, the Journal of Thoracic Surgery, 1957.
Editorial board, the Journal of Trauma.
Special committee appointments:
Advisory Membership Committee, American Surgical Association.
Advisory Council on Thoracic Surgery, American College of Surgeons.
Advisory Board, International Abstracts of Surgery.
Conference Committee on Graduate Training in Surgery.
Medical Conference Committee, Labor Health Institute.
Council American Association for Thoracic Surgery.
Credentials Committee, American College of Surgeons.
Dean's Committee, Veterans' Administration.
Medical Advisory Board, Washington University Clinics.
Membership Committee, American Association for Thoracic Surgery, chairman.

PUBLICATIONS OF THOMAS H. BURFORD, M.D.

1935

1.	"A Study of a Set of Quadruplets" (with A. W. Diddle).	The Anatomical Record, 1935, 61: 281–293.

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2.	"Analyses of Urine of Chimpanzees for Estrogenic Content During Various Stages of Menstrual Cycle" (with E. Allen, A. W. Diddle and J. H. Elder).	Endocrinology, 1936, 20: 546–549.
3.	"Effect of Total Hysterectomy Upon Ovary of Macacus Rhesus: Experimental Study" (with A. W. Diddle).	Surg., Gynec., and Obst., 1936, 62 701–707.
4.	"Effect of Total Thyroidectomy Upon Experimentally Induced Menstruation in Mature Ovariectomized Monkeys" (with E. Allen and A. W. Diddle).	Endocrinology, 1936, 20: 635–648.

1937

5. "Experimental Menstruation in Monkey after Removal of Ovaries and Adrenals" (with E. Allen, R. V. Worthington, and A. W. Diddle). Proc. Soc., Exp. Biol., and Med., 1937, 36: 162–163.

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6. "Local Implantation of Sulfanilamide in Compound Fractures; Its Effect on Healing" (with J. A. Key). South. Med. J., 1940, 33: 444–455.
7. "Local Use of Sulfanilamide in Various Tissues" (with J. A. Key and C. M. Frankel). J. Bone and Joint Surg., 1940, 22: 952–958.

1941

8. "Local Use of Sulfanilamide in Pleural Cavity" (with E. A. Graham). J. Thor. Surg., 11: 203–209.
9. "Prophylatic Implantation of Sulfanilamide in Clean Operative Wounds for Reduction of Post-Operative Infections" (with J. A. Key). Surg., Gynec., and Obst., 1941, 73: 324–332.

1942

10. "Influence of Sulfanilamide Therapy on Postpneumonia Empyema Thoracis" (with B. Blades). J.A.M.A., 1942, 118: 950–952.

1943

11. "Symposium on War Medicine; Management of Thoracic War Injuries" (with J. H. Forsee and others). J. Lab. and Clin. Med., 1943, 28: 418–440.
12. "El tratamiento de las heridas toracias de guerra" (with J. H. Forsee and others). Prensa Med. Argent., 1943, 30: 739–757.

1944

13. "Report of Thoracic Surgical Service" (with P. C. Samson and B. Burbank). M. Bull. North African Theat. Op. (No. 1), 1944, 1: 10.

1945

14. "Management of War Wounds of Thorax in Overseas Theater" (with P. C. Samson). Clinics, 1945, 3: 1561–1585.
15. "Early Pulmonary Decortication in the Treatment of Post-Traumatic Empyema" (with E. F. Parker and P. C. Samson). Ann. Surg., 1945, 122: 163–196.
16. "Review of 1,000 Thoracic Cases." Bull. U.S. Army Med. Dept., 1945, 89: 70–72.
17. "Traumatic Wet Lung" (with Benjamin Burbank). J. Thor. Surg., 1945, 14: 415–424.
18. "Immediate Care of the Wounded Thorax" (with P. C. Samson et al.). J.A.M.A., 1945, 129: 606–610.

1946

19. "Experience in the Localization of Thoracic Foreign Bodies" (with Benjamin Burbank).	J. Thor. Surg., 1946, 15: 64–75.
20. "The Management of War Wounds of the Chest in a Base Center" (with P. C. Samson, L. A. Brewer, and B. Burbank).	J. Thor. Surg., 1946, 15: 1–30.

1947

21. "Total Pulmonary Decortication; Its Evolution and Present Concepts of Indications" (with P. C. Samson).	J. Thor. Surg., 1947, 16: 127–145.
22. "Primary Carcinoma of the Lung" (with E. A. Graham).	Modern Med., 1947, 15: 63–65.

1948

23. Textbook of General Surgery (with W. Cole and R. Elman).	Fifth edition, Appleton-Century, 1948.
24. "Diagnosis and Surgical Treatment of Certain Congenital Cardiovascular Anomalies" (with M. J. Carson).	J. Pediatrics, 1948, 32: 495–515.
25. "Middle Lobe Syndrome" (with E. A. Graham and J. H. Mayer).	Postgrad. Med., 1948, 4: 29–34.
26. "Pulmonary Decortication in the Treatment of Early Pyogenic Empyema" (with E. F. Parker).	Surgery, 1948, 24: 371–391.
27. "Diagnosis of Pulmonary Stenosis by Angiocardiography" (with M. J. Carson, W. G. Scott and J. Goodfriend).	J. Pediatrics, 1948, 33: 525–543.
28. "Visualization of the Aorta and Its Branches by Retroarterial Diodrast Injection" (with M. J. Carson).	J. Pediatrics, 1948, 33: 675–687.

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29. "The Use of Tubed Pedicle Grafts in Carcinoma of the Upper Esophagus" (with E. M. Bricker and B. Eiseman).	J. Thor. Surg., 1949, 18: 304–315.
30. "Angiocardiography and Aortography in the Diagnosis of Congenital Cardiovascular Lesions" (with M. J. Carson and W. G. Scott).	J. Thor. Surg., 1949, 18: 860–868.

1950

31. "Coarctation of the Aorta and Its Treatment."	Surg. Clin. N. Amer., 1950, 30: 1249–1258.
32. "Diagnosis and Management of Chest Tumors".	So. Med. J., 1950, 43: 755–759.
33. "Pulmonary Paraffinoma" (Lipoid Pneumonia).	J. Thor. Surg., 1950, 20: 418–428.
34. "Respiratory and Circulatory Studies After Pneumonectory in Childhood".	J. Thor. Surg., 1950, 20: 484–493.
35. "Respiratory and Circulatory Studies in Patients After Bilateral Lobectomy" (with F. H. Taylor and A. Roos).	J. Thor. Surg., 1950, 20: 974–981.

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36. "The Pathology of Experimentally Produced Lye Burns and Strictures of the Esophagus" (with L. H. Bosher, Jr., and L. V. Ackerman). J. Thor. Surg., 1951, 21: 483–489.

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37. "Gangrene of the Arm Following Use of the Subclavian Artery in a Pulmonosystemic (Blalock) Anastomosis" (with Watts Webb). J. Thor. Surg., 1952, 23: 199–205.
38. "The Effect of Ether Anesthesia Upon Alveolar Ventilation and Acid-Base Balance in Man" (with J. G. Gabbard, A. Roos and D. Eastwood). Ann. Surg., 1952, 136: 680–690.
39. "Trends in Mitral Valvuloplasty" (with Bercu, B. A. and Massie, E.). Proc. Central Soc. for Clin. Research, 1952, 25: 7–9.

1953

40. "Studies of the Re-expanded Lung After Prolonged Atelectasis" (with Watts Webb). Arch. Surg., 1953, 66: 801–809.
41. "Caustic Burns of the Esophagus and Their Surgical Management" (with Watts Webb and Lauren V. Ackerman). Ann. Surg., 1953, 138: 453–460.

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42. "Selective Angiocardiography" (with J. F. Neville, Jr., and B. Bercu). Surg. Forum. Am. Coll. Surgeon, 1954.
43. "Hemoptysis" (with F. H. Taylor). Missouri Med., 1954, 19–22.

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44. "The Mediastinum" (with L. H. Bosher). Pullen, R. L., Pulmonary Diseases, Lea and Febriger, Phila., 1955, 557–605.
45. "The Diaphragm" (with J. H. Mayer). Pullen, R. L., Pulmonary Diseases, Lea and Febriger, Phila., 1955, 606–630.
46. "Injuries of the Thorax and Its Contents". Pullen, R. L. Pulmonary Diseases, Lea and Febriger, Phila., 1955, 631–656.
47. "Caustic Burns of the Esophagus" (with G. H. Lawrence). Postgrad. Med., 1955, 18: 159–164.
48. "Congenital Aneurysm of the Superior Vena Cava" (with G. H. Lawrence). J. Thor. Surg., 1955, 31: 327–330.

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49. "Evaluation of Mitral and Aortic Valvular Disease by Left Heart Catheterization" (with G. H. Lawrence et al). Surg. Gynec., and Obst., 1956, 101: 558–562.
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51. "Results in the Treatment of Bronchogenic Carcinoma" (with Sol Center et al). J. Thor. Surg., 1958, 36: 316–324.
52. "Evarts Ambrose Graham" Eulogy. J. Thor. Surg., 39: 47–59, 1960.
53. "Tumors of the Lung and Mediastinum" (with Thos. B. Ferguson). Chap. II Surgical Treatment B. M. Fried., Lea and Febriger, 1958, Phila., Pa.

1959

54. "The Role of Surgery in the Management of Unilateral Pleural Effusion" (with Thos. R. Ferguson).	Ann. Int. Med., 1959, 50: 981–997.
55. Chapter on Lungs and Mediastinum.	Textbook of Surgery, Cole and Elman, 7th edition, Appleton-Century-Crofts, New York, N.Y.

1960

56. "Coarctation of the Aorta in Infants" (with Thos B. Ferguson, D. Goldring and M. R. Behrer).	J. Thor, Surg., 39: 47–59, 1960.
57. "An Evaluation of the Modified Heller Operation in the Treatment of Achalasia of the Esophagus" (with Thos. B. Ferguson).	Ann. of Surg., 1960, 152: No. 1.
58. "Digitalis in Surgery: Extension of Classical Indications" (with Myron W. Wheat, Jr.).	J. Thor. and Cardiovascular Surg., 1961, 41: No. 2, 162–168, C. V. Mosby Co., St. Louis, Mo.
59. "Complete Functional Restitution of the Food Passages in Extensive Stenosing Caustic Burns" (by invitation with Jos. H. Ogura, and Chas. L. Roper).	J. Thor. and Cardiovascular Surg., 1961, 42: No. 3, 340–351; 359–362, C. V. Mosby Co., St. Louis, Mo.
60. "Current Concepts of the Management of Acute Mediastinitis" (with Watts R. Webb).	Am. Surg., 28: 309–319.

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61. "Coronary Artery Occlusion, A Complication of Thoracic Aortography in a Patient with Calcific Aortic Stenosis" (with Hakan Arvidsson, Brent M. Parker).	Am. J. Cardiol., 10: 115–119.

1963

62. "Opacification from the Pulmonary Artery of an Anomalous Left Coronary Artery" (with Marvin J. Friedenberg, Alexis F. Hartman, Jr., and Jerome L. Silverman).	Radiology, 80: 806–810.
63. "The Diagnosis of Aorticopulmonary Septal Defect" (with Brent M. Parker, Erik C. Carlsson and Edward F. Buchner).	Am. Heart J., 65: 534–541.
64. "Administrative Considerations in the Mediterranean (Formerly North African) Theater of Operations" (with Lyman A. Brewer, III).	History of World War II, Thoracic Surgery, Vol. 1, pp. 73–111.
65. "Evolution of Clinical Policies in the Mediterranean (Formerly North African) Theater of Operations."	History of World War II, Thoracic Surgery, Vol. 1, pp. 185–212.
66. "Reparative Surgery."	History of World War II, Thoracic Surgery, Vol. 1, pp. 299–303.
67. "Hiatal Hernia in Infancy and Childhood" (with Hiram C. Polk, Jr., M.D.).	Surgery, 54: 521–525.
68. "The Management of Chylothorax Related to Trauma" (with Kirkley R. Williams, M.D.).	J. Trauma, 3: 317–325.
69. "Indwelling Electronic Cardiac Pacemakers" (with B. M. Parker, M.D., Lee C. Shine, M.D., and Kirkley R. Williams, M.D.).	J.A.M.A., 186: 94–98, November, 1963.

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70. "The Changing Pattern of Empyema Thoracis in Pediatrics" (with J. N. Middelkamp, M. L. Purkerson.). J. Thor. and Cardiovascular Surg., 47: 165–173, 1964.

Mr. ROBERTS. Thank you, Doctor. Does that conclude your statement?

Dr. BURFORD. This, sir, concludes my formal statement.

Mr. ROBERTS. I am sorry that I didn't get to hear the earlier part of your statement. I do appreciate very much your attaching to the statement your qualifications; they are an outstanding list of associations and memberships in many outstanding groups.

Certainly your experiences as a doctor and surgeon are quite impressive. I appreciate very much the fact that you have included his, along with your, statement. I have no questions at this time. The gentleman from Florida.

Mr. ROGERS of Florida. Doctor, I too, am impressed with your experience with cancer. Have you had an opportunity to read the Surgeon General's report on smoking?

Dr. BURFORD. Yes, sir; I have been through it.

Mr. ROGERS of Florida. You feel there is really no basis in these studies at all to show this connection.

Dr. BURFORD. No, sir. I have to stick firmly with my perhaps somewhat dogmatic opinion. This opinion was not formed easily. I would remind the committee that this opinion was formed when I was working side by side by one of the really great surgeons of America, Everts Graham. I do smoke, I do not represent the industry.

Mr. ROGERS of Florida. Is there any difference when you operate?

Dr. BURFORD. I didn't hear you, sir.

Mr. ROGERS of Florida. Is there any difference when you operate in the lungs of a man who smokes and the lungs of a man who does not smoke? Is it is noticeable, is it discernible?

Dr. BURFORD. Not to me. I think those that claim there is a difference are leaning way over in a prejudiced direction. It is rare in these times that we operate on a person who has not been subjected to a number of environmental stimuli. I said in my formal statement that I believe there was perhaps more evidence that air pollution causes cancer. I come back in the end of my formal statement and really say that I don't believe that air pollution anymore than cigarette smoking causes cancer, and I don't. We see people who have been coal miners. We see people who have lived an urban life all their lives. It is rare to see what one could consider in these times a virginal country boy type of unspoiled lung.

Mr. ROGERS of Florida. But there is not difference as far as you have discerned between one who smokes and one who doesn't?

Dr. BURFORD. None whatever.

Mr. ROGERS of Florida. I ask that question because certainly as a layman I have no knowledge. I have been given the impression from talking to medical people that in the lung of one who smokes you could see a tar coating or some indication of smoking.

Dr. BURFORD. One cannot. One can see what we call coal dust lungs, and so on and so on, on the periphery. But when one looks within, inside the wind pipe, with an instrument called a bronchoscope, a

routine examination, one cannot tell by vision or by any other method whether this patient is a smoker or a nonsmoker. There are those who on the basis, to me at least, of fragmentary evidence contend after they have taken a piece of the lining and have examined it under the microscope that they can detect differences. I don't think that the majority of pathologists will agree with that.

Mr. ROGERS of Florida. You said some years ago there used to be the theory that the cancer developed in the larger part of the lung?

Dr. BURFORD. Yes, sir. The windpipe is a sort of an inverted tree without leaves. The trachea, the main windpipe that leads from the vocal cords on down to where the two main bronchi branch off to each lung, the trachea and those two major bronchi and then the windpipes that come off immediately the so-called major bronchi were originally thought to be the site of origin of the majority of tumors. It was so when I came into the specialty. There have been a number of studies, among the best being that of Dr. Garland and his group that have definitely proven and this is supported by Lebow of Yale and others that over half of the kinds of tumors that arise arise in the outermost portion of the windpipe or this tree, the more peripheral branches of the tree, and not centrally as we used to think.

Mr. ROGERS of Florida. Do you know any way of using surgery to prove or disprove whether smoking did affect a person as far as cancer is concerned?

Dr. BURFORD. I don't know of any method today that will approach this problem as specifically and precisely as we all hope it will be approached. The great difficulty, as so many people have pointed out, is we don't know what we are looking for. The thing that impresses me, sir, about cancer is that it is one of a piece. When I operate on a cancer of the food tube, the esophagus, the gullet, there it behaves just like the cancer of the lung. If we get it early it is within the food tube just like the cancer of the lung is within the bronchus. If, however, it goes further it has gone outside and it is invading the glands. This is true of cancer of the woman's cervix. It is true of cancer of the stomach and so on and so on. The experienced surgeon can't tell grossly enough difference between lung cancer and a woman's cervix—cervical cancer. I had a case last week, the woman had had a cancer of the cervix 15 years before. I took out a cancer of the lung. Both of these were epidermoid cancers. She did not smoke. The pathologists can't tell anymore than I can tell, which this is. Whether this came from her previous cervical cancer or whether it is a primary—a primary lung cancer. This is deep water, this whole business of lung cancer. We are fishing in some of the deepest water in all of biology.

Mr. ROGERS of Florida. Haven't you stated that there are some studies to show that air pollution would have as much effect as cigarettes?

Dr. BURFORD. That is true purely from a statistical point of view. What we are going to have to do to prove this thing is to find an agent where we can duplicate time after time a set of experiments which prove that this agent in a given animal will cause a cancer. This has been tried many, many times with many, many agents, with tobacco, with the tars, benzapyrene, et cetera, et cetera. You can paint the shaved back of a mouse and produce a type of skin cancer.

No matter how hard anybody has tried, tobacco tars in the wind pipes of animals has not produced cancer. They have produced an adenoma which is not invasive, but these occur spontaneously in experimental animals. It should be, if we had the proper kind of excitant and we had arrived at this by careful research, possible to take a primate who has essentially the same type of wind pipe I have and put this agent in his lung and produce the cancer. Not only today but to do it again next week and next week.

Mr. ROGERS of Florida. From your standpoint of your study and knowledge of the subject, would you say it has been only recent studies that have brought about this theory of cigarette smoking causing cancer.

Dr. BURFORD. No; I don't think it is very recent. I can at least remember some comment on this in the latter thirties.

Mr. ROGERS of Florida. I was just wondering whether there were any studies that led to this conclusion?

Dr. BURFORD. I think the earliest studies that I am aware of, of any magnitude, came along in the early forties. This thing really became the subject of quite a bit of study sometime after World War II, 1946 and 1947. So as we measure time that is relatively recent.

Mr. ROGERS of Florida. I was somewhat surprised at your statement because I believe these studies had been fairly scientifically made. The fact that the American Medical Association has just over the weekend or just in the past few days passed a resolution saying that there is a definite causal relationship between cigarette smoking and cancer. I believe that is the way it is worded.

Dr. BURFORD. I believe that is about right. However, I don't have the two statements to compare. But as I remember this doesn't represent too much of a modification of their previous statement. Yet again they concluded that we must have more investigation on the subject. I think the position of the American Medical Association, which represents a very large body and which I am sure is subject to a number of pressures, has to change its position from time to time. Perhaps trying to keep the proper posture for certain pressue goups within its vast organization. I don't happen to agree with the recommendation they passed in San Francisco.

Mr. ROGERS of Florida. I was interested in that statement that pressures might bring this about. I can understand some of what you mean. I think this would be a rather strong position to take if the evidence was not fairly conclusive.

Dr. BURFORD. My position, sir.

Mr. ROGERS of Florida. I am speaking of the American Medical Association.

Dr. BURFORD. I think perhaps they are in a position where they can change again if the wind drifts a bit to the north or to the south or if some evidence comes up from another source.

Mr. ROGERS of Florida. As you say we do have these changing theories. Now you feel it starts from the smaller bronchi so I presume this is subject to change, as we know more about cancer itself. But you do not feel there is sufficient evidence at all to have any action taken whatsoever on smoking, even an educational campaign, directed at young people?

Is that your position?

Dr. BURFORD. No; I do not. I think this is a two-sided coin. I think we are producing in this country a disease that is worse than cancer. Cancer phobia. I am very sincere about that. I have lived past the half century and I find the older I get the more I think in terms of the quality of life rather than purely the quantity of life. I think most of us who are in the specialty of chest work are seeing an unprecedented number of people, within recent months particularly since the Surgeon General's report came out and was so well publicized, that come into your office scared literally to death that they have a cancer.

It very frequently takes all of the tests to reassure them that they don't have one. It has gotten to the point where it does very little good for a competent man to look at a good X-ray or the two good X-rays that we consider constitute the initial examination of the chest and reassure them on that basis. Many of these people have to be hospitalized, have to be bronchoscoped and have to be literally shown the report from the laboratory before they are reassured that they don't have a cancer.

Mr. ROGERS of Florida. Doctor, have you ever been asked to serve or present testimony or perhaps be a part of a panel to go into this question by the Surgeon General or by any other group that has been interested in this problem?

Dr. BURFORD. Yes, sir, on two or three occasions I have.

Mr. ROGERS of Florida. What were those occasions, if you can recall?

Dr. BURFORD. One was the local affair in St. Louis.

Mr. ROGERS of Florida. Was that the medical association?

Dr. BURFORD. Yes, sir. Of the city. Another happened to be a television program that wanted to put on an inform-the-public type of thing.

Mr. ROGERS of Florida. Has the Surgeon General solicited your views?

Dr. BURFORD. No, sir; he did not.

Mr. ROGERS of Florida. What was the result of the panel you served on for the local medical association? Was any action taken?

Dr. BURFORD. No. The St. Louis Medical Society did not take any action and has not to my knowledge taken any action subsequent to the report of the Surgeon General.

Mr. ROGERS of Florida. Thank you. Thank you very much, Mr. Chairman.

Mr. ROBERTS. I thank the gentleman from Florida. I would like to ask the committee to cooperate, if it will, with the Chair. We have witnesses here all the way from Los Angeles and from all over the country. These are important people and they want to get home. While I know that this is important to the members and to the public at large, I would appreciate if we would hold your interrogation down to a minimum. The gentleman from North Carolina.

Mr. KORNEGAY. Thank you, Mr. Chairman. Dr. Burford, I want to first thank you and compliment you for your very fine statement here. I simply ask you if in your opinion the report to the Surgeon General from his Advisory Committee is sufficient to justify the labeling of cigarettes in accordance with the rule recently promulgated by the Federal Trade Commission, and that is to the effect that cigarette smoking is dangerous to health and may cause death from cancer or other diseases?

Dr. BURFORD. No, sir; I do not believe that the evidence is sufficient to warrant any such action.

Mr. KORNEGAY. Thank you very much.

Mr. ROBERTS. The gentleman from California.

Mr. VAN DEERLIN. Doctor, you spoke of pressure groups within the vast organization of the American Medical Association as possibly having contributed to the statement that was made over the weekend at San Francisco.

Dr. BURFORD. What I actually said was that I am sure that this great body was subject to pressures like any organization.

Mr. VAN DEERLIN. I was just wondering what pressures might have been operative here other than the pressure to seek out the truth?

Dr. BURFORD. I am not familiar with the inner workings of the American Medical Association because I serve neither on their council or any of their advisory committees. I was thinking more particularly of pressures from perhaps a constituency. I don't think it is any secret to this committee that perhaps the majority of the people today believe that the smoking of cigarettes has an important bearing on the causation of cancer of the lung. I think perhaps that if one were to take a poll of the membership of the American Medical Association that perhaps the majority of doctors might say they did believe that this has some bearing.

I am simply saying emphatically that I do not believe it and outlining my reasons for it.

Mr. VAN DEERLIN. You are a member of the AMA?

Dr. BURFORD. I am. One cannot practice in this country without being a member of the American Medical Association. That is, one cannot practice medicine.

Mr. VAN DEERLIN. You mean in St. Louis?

Dr. BURFORD. Yes, sir.

Mr. VAN DEERLIN. I believe that statement would not be true in California.

Dr. BURFORD. I think it would be as to the practice of medicine. Because every State medical association is chartered, as it were, directly from the mother institution, the American Medical Association. They have the organizational lines going on down to the county and to the State.

Mr. VAN DEERLIN. The big grip they have is inadmissability to staffs of the major hospitals. Only because of the chairman's admonition to keep the questioning short I don't think any useful purpose would be served by following that up. I do wonder if the pressures that you have in mind might be in any sense political pressures, pressures from the administration, let us say, or administration agency, or whether, as you have indicated, you have indicated you think it might be limited to the pressures of constituency, either of the AMA or the patient constituent there?

Dr. BURFORD. I have no knowledge to justify my making any comments in regard to outside pressures. I am convinced that everybody who believes that cancer of the lung is caused by smoking cigarettes is sincere in his belief. This subject of cancer is something that many many people are preoccupied with, particularly after they reach 40 years of age. No, I don't mean to allege that anybody is banding together to do this. As I said, I think that probably a majority of peo-

ple in the country now believe this. Certainly I find myself as a smoker having to defend my vices frequently, when we are discussing cigarettes, having to listen to my nonsmoking confreres extol his virtues. This is perfectly human. It happens all over. Medicine is not above that type of nonobjectivity.

Mr. VAN DEERLIN. Thank you, Dr. Burford.

Mr. ROBERTS. The gentleman from South Carolina.

Mr. WATSON. Mr. Chairman, I have no questions but I would like to make one observation, Doctor. As I have looked at your background and experience and your vast number of publications in the cardiovascular field, I am amazed that the Surgeon General did not seek the counsel or the advice of a gentleman of your position, especially when his report revealed that 50 percent—not 15 or 20 percent, but 50 percent—of the smoker group of the excess deaths were attributable to heart disease.

Yet the Surgeon General decided to go off looking at cigarettes, rather than at your particular field. I am amazed that he did not confer with a man of your experience.

Dr. BURFORD. You honor me.

Mr. ROBERTS. The gentleman from Pennsylvania.

Mr. ROONEY. I have no questions.

Mr. ROBERTS. The gentleman from Illinois.

Mr. SPRINGER. Dr. Burford, it is my understanding—are you a specialist in cancer?

Dr. BURFORD. I am a specialist in lung cancer. I don't limit myself to lung cancer as my bibliography will show. It so happens that any chest surgeon today who is not devoting himself exclusively to heart surgery will be doing a large number of cancers of the lung.

Mr. SPRINGER. Of the lung?

Dr. BURFORD. Of the lung.

Mr. SPRINGER. As a result of that 4,000, have you also done some research in this field?

Dr. BURFORD. No, sir, I have not.

Mr. SPRINGER. Yours is limited to surgery?

Dr. BURFORD. Mine is limited to surgery, as I say in my statement. I am neither a researcher in cancer nor am I a statistician.

Mr. SPRINGER. Have you come to any conclusions in your own mind as to how you believe cancer originates?

Dr. BURFORD. The only suggestion I have made or will make publicly, because I don't know the answer to cancer any more than anyone else does, is that the most promising thing to me seems to be—and the evidence admittedly is only fragmentary—is in this business of virus-like substances. I am encouraged by these dedicated fundamental research workers who work along unpublicized and who are beginning, it seems to me, to make some very minor breakthroughs in the field of virology of cancer, particularly in the tumors of lymph nodes and leukemia. It is true what they have done to date in animals has not been successfully carried over to the human or even to the primates.

But to me there lies the hope in the near future of their being a major breakthrough.

Mr. SPRINGER. As I understand it, cancer is a change in the formation of cells, is that right?

Dr. BURFORD. Yes, sir.

Mr. SPRINGER. Do you believe that toxic substances of this sort have an effect in changing those cells?

Dr. BURFORD. I do not.

Mr. SPRINGER. I notice you did say or at least you inferred that possibly it could be certain types of air. I think you mentioned that it might possibly be due to air contamination. At least a number of reports tend to associate cancer with air contamination?

Dr. BURFORD. Yes. I said on page 5 that there is as much or more reason to suspect air pollutants as there is to suspect cigarette smoking.

Mr. ROBERTS. Would the gentleman from Illinois yield to me?

Mr. SPRINGER. Yes.

Mr. ROBERTS. Dr. Burford, do you think it might be profitable for certain studies to be made in areas of high incidence of air pollution?

Dr. BURFORD. I do indeed. I indicated to the committee before Mr. Springer came in that even though I had made this admission concerning air pollution that I personally believe that the cause of cancer will be found outside the area of even air pollution or cigarette smoking. I made a rather amateurish little speech in my belief in the fundamentalism in cancer. I cannot see this disease today and every day and believe that cancer of the lung is different from the cancer of bowel or stomach or whatever from the standpoint of etiology. I believe we will have to look further and find something much more fundamental.

Mr. SPRINGER. It is your thought that cancer probably, if it is cancer of the liver, stomach, or intestine, probably is the same kind of cancer as the cancer of the lung?

Dr. BURFORD. Yes, sir.

Mr. SPRINGER. In other words, the cancer cell is just the same in the lung as it is in the bowel or in the stomach?

Dr. BURFORD. That is my feeling.

Mr. SPRINGER. Are scientists agreed on that?

Dr. BURFORD. Some do, some don't.

Mr. SPRINGER. What about cancer of the lymph nodes?

Dr. BURFORD. Cancer of the lymph nodes I believe as cancer of the blood is all a part of the same process.

Mr. SPRINGER. In other words, you think it probably originates and terminates in the same way. That is, as the cell changes you think that the scientific process is the same?

Dr. BURFORD. The trigger mechanism, if you will accept that.

Mr. SPRINGER. That is a better way of saying it. A great deal of science today, in fact the majority of science today, believes that it is virus originated, is that not true? Is that not the consensus at the present time?

Dr. BURFORD. I do not know whether it is fair to say the majority. I would say a substantial portion of those people who are very significant and very learned researchers do believe this. Those that I know and have discussed this with believe very definitely there is going to have to be another factor. Perhaps you are totally immune by virtue of your inheritance from ever having a cancer no matter what type of virus or viruslike substance, if this is what it turns out to be, invades your body. Perhaps I am going to get it in the first organ that the virus happens to settle in by virtue of my lack of these subtle, inherited immunologic factors.

Mr. SPRINGER. Is it your thinking and a large part of the scientific feeling that inheritance is the basis for it?

Dr. BURFORD. I think there is going to be a very definite individual either resistance or tendency toward this disease when the jigsaw is finally put together. I am no expert in this.

Mr. SPRINGER. Let me just ask you this, and I think I am through. I want to be sure I get my science in order. To simplify it for me, it is not your belief that toxic subjects are the cause of cancer?

Dr. BURFORD. That is true, sir.

Mr. SPRINGER. Is there a substantial amount of scientific research toward that?

Dr. BURFORD. I believe there is a substantial group of significant people in research who would support that feeling.

Mr. SPRINGER. I have this second question. Are all researchers or a substantial body of researchers agreed that in addition to not being caused by toxic substances that it is originating primarily by virus, a trigger mechanism, causing a change in cell?

Dr. BURFORD. No, not by any means. There is a substantial amount of difference among researchers in various areas. There are people who are doing research on cigarette smoke today who are very qualified researchers and they believe very definitely and fervently that they are going to find within the cigarette tars or within the cigarette makekup somewhere the triggering agent.

There are other researchers who believe they will find it somewhere in the air pollutants. There are other researchers that believe that it may be due to this or that.

Mr. SPRINGER. This is something I didn't understand about the virus until just one or two sentences you made back just a little bit. Is it your belief that the virus which causes this trigger mechanism comes from the outside?

Dr. BURFORD. It is my belief that these viruses or virus-like substances, if this proves to be correct—as I said, this has never been proven in the human, it is very nebulous, we are only beginning to see some of the exciting suggestions from this business—that it will be from the outside.

My prediction, and please don't interpret me as a research specialist in this, letting you in on any secrets because I know none and it is simply an opinion of mine, that this will be a very common type of virus-like substance that probably most of us have an experience with every day or every week.

Mr. SPRINGER. But we do not get that trigger mechanism in operation.

Dr. BURFORD. Because of some of these other things that I have vaguely mentioned. There are all sorts of things happening in science. They are taking down the molecule now. They are taking apart the cell and the genes and rearranging them and so on. I think the possibilities in this whole field are very exciting and very enormous.

Mr. SPRINGER. Thank you, Mr. Chairman.

Mr. ROBERTS. I have one question.

Doctor, has it been established and accepted in the medical profession that there are certain types of disease which are subject to the inherent or heriditary theory that you mentioned? In other words, I think diabetics seems to run in family cycles; is that correct?

Dr. BURFORD. There are definitely diseases that have a hereditary tendency. There are diseases that have a very definite predictable inherited propensity for occurrence. Many things one can predict almost mathematically in what generation and how many will occur.

Mr. ROBERTS. Could you name some of the diseases which, in your opinion, have established the truth of this statement?

Dr. BURFORD. My memory slips at the moment. Many have peculiar names from the standpoint of men who named them.

Mr. ROBERTS. How about "bleeders" disease?

Dr. BURFORD. Hemophilia is one. It shows you what specialization will do for your memory. Thank you.

Mr. ROBERTS. That is all I have. Are there any other questions? If not, thank you, doctor, very much.

Mr. SPRINGER. Doctor, may I ask just one question before you leave?

In 4,000 cases that you have dealt with in one form or another, what percent of those have been cured for a period of 5 years?

Dr. BURFORD. I hope the chairman does not rebuke me for being a little longer than he wants me to be. I will have to tell you first of all if I can put it as simply and briefly as I can, the picture is pretty gloomy. If a thousand people walk into my office one-third of that 1,000 people is hopeless when seen to the experienced. The remaining two-thirds may be operable. However, when we finally wind up we have only managed to get the lung out in one-third. That is, do a definitive operation in one-third. This reduces our opportunities for cure very materially. Then after we have taken this group that we have done the hopefully curative operation on and see them again after 5 years, if we have 90 people out of that original thousand living we have done as well as anybody in this country or Europe, including Russia, can do.

Mr. SPRINGER. Thank you.

Mr. ROBERTS. How much of this picture could be changed with regular checkups?

Dr. BURFORD. I think, sir, tragically very little. People have gone all out in an effort; various associations in this country have done an extremely good job in emphasizing to people of the need for frequent checkups. And yet if one looks realistically at the picture, and we have 25 years of this, there has been no essential change.

In our institution which is one of the larger lung cancer hospitals, we have noticed no change in 1964 from the standpoint of the earliness of the case over what it was in 1933 when Evarts Graham removed the first lung for cancer of the lung successfully. Thirty-one years and no progress in getting the cases early.

Mr. ROBERTS. Have the techniques for deep surgery improved greatly?

Dr. BURFORD. The techniques in surgery and the results of surgery have improved markedly. But this business of finding the case early is a real difficult one to solve. It is not the doctor's fault, it is not the patient's fault. I do not know where to put the fault. One cannot ask with any sense of realism for a man to come in every month or 3 months for a complete checkup. Yet, that is what it would take.

Mr. SPRINGER. In other words, the fact that you had an X-ray once a year, even though that X-ray were read thoroughly, that is not the answer to the problem?

Dr. BURFORD. Not at all.

Mr. SPRINGER. How rapidly would lung cancer spread?

Dr. BURFORD. It varies all over the lot. I would say an average lung cancer that is 6 months old is getting awfully old for a surgeon to hope for a cure.

Mr. WATSON. Doctor, you do not mean to say that early detection of cancer would not improve or enhance the chances of being cured?

Dr. BURFORD. I do not indeed. I just simply say from a practical point of view it is an almost impossible thing to accomplish. We all work at it. Every organization in the community works at it. Yet when the final results are in we are not accomplishing very much.

Mr. WATSON. The reason I ask the question is, that certainly I am a firm believer in the advertising of the Cancer Society, of fighting with a checkup and a check.

Dr. BURFORD. I agree.

Mr. WATSON. I seems we should not want to give the impression here that regular periodic physical examinations would not enhance the chances of early detection.

Dr. BURFORD. I do not want to give that impression either except I can only tell you that from the standpoint of our area, the chest, the way it is carried out today, and I do not know how to do it any better, we are not seeing cancer of the lung any earlier than we were 30 years ago.

Mr. WATSON. Doctor, you would agree that the matter of the possibility of early detection would be materially enhanced if you had regular checkups?

Dr. BURFORD. I think it would be. I just wish it were yielding greater practical benefits.

Mr. WATSON. Thank you, sir.

Mr. ROBERTS. Thank you again, Doctor.

Dr. BURFORD. Thank you.

Mr. ROBERTS. Dr. Henry I. Russek, cardiologist, Staten Island, N.Y. Doctor, I realize the importance of every witness here. I know that you are all important and useful people, but may I ask you, sir, to summarize your statement for us?

STATEMENT OF DR. HENRY I. RUSSEK, CONSULTANT IN CARDIOVASCULAR DISEASE, U.S. PUBLIC HEALTH SERVICE HOSPITAL, STATEN ISLAND, N.Y.

Dr. RUSSEK. My statement, sir, is rather brief and I would appreciate it if I could read it.

Mr. ROBERTS. You may go ahead.

Dr. RUSSEK. I am Dr. Henry I. Russek, former Director of Cardiovascular Research at the U.S. Public Health Service Hospital, Staten Island, N.Y., and currently consultant in cardiovascular disease at that institution.

I am a fellow of the American College of Physicians, the American College of Cardiology, the Council on Clinical Cardiology of the American Heart Association, the American College of Chest Physicians, and the International College of Angiology.

I am certified by the American Board of Internal Medicine and hold certification in the subspecialty of cardiovascular disease. I am

the author of more than 100 publications concerned with diseases of the heart. My qualifications and publications in greater detail are attached herewith.

RESEARCH INTO THE CAUSES OF CORONARY HEART ATTACKS

In a continuing study since 1956 we have sought to determine the relative significance of various factors in the causation of coronary heart attacks. A careful study of 100 young coronary patients revealed that emotional stress associated with occupation appeared to be far more significant than heredity, dietary fat, tobacco, obesity, or physical inactivity in the development of heart attacks. We found that 91 percent of our young coronary victims as compared with only 20 percent of healthy controls had been holding down two jobs, working more than 60 hours per week or experiencing unusual fear, insecurity, discontent, frustration, restlessness, or inadequacy in relation to employment (table 1). No other factor considered showed such a striking disparity between the healthy and afflicted groups.

In order to test the apparent relationship between occupational (emotional) stress and coronary attacks new studies were undertaken to compare the prevalence of heart disease in selected occupational categories in which striking differences exist with respect to job responsibilities.

To date a survey has been carried out in over 12,000 professional persons in 14 occupational groups. General practitioners and specialists in medicine, dentistry, and law provided the major source of our material. Independent evaluations of qualified judges indicated that among physicians, stressfulness of occupation increases in the following order: dermatologists, pathologists, anesthesiologists, and general practitioners.

Among dentists, emotional stress was prejudged to increase in the following order: periodontists, orthodontists, oral surgeons, and general practitioners.

For the attorneys, job responsibility was considered to increase in the following order: patent attorneys, lawyers in selected specialties, trial lawyers, and general practitioners.

In addition to these groups comparison was made between security analysts and security traders on the New York Stock Exchange. From the complete returns it is clearly evident that a striking correlation exists between stressfulness of occupation and coronary heart disease (fig. 1).

TOBACCO STUDIES

In spite of clear statistical evidence that overindulgence in smoking is far more prevalent among candidates for coronary attacks than among normal controls there is at present little else to support a causal relationship between tobacco consumption and heart disease.

Statistical findings linking the tobacco habit to coronary disease afford no proof of a causal relationship since excessive smoking, like overeating and failure to obtain adequate exercise is often an undeniable manifestation of psychological stress.

Thus, while each of these factors shows a correlation with heart disease, emotional influences could alone be implicated in its causation.

For example, "nail-biting" could be far more common among coronary heart disease victims than among healthy controls but no one would seriously consider this habit as a causative factor.

Yet, the stress which underlies this nervous habit could well be an initiating or aggravating influence in coronary disease. Our data clearly indicates not only that the smoking habit is more prevalent in occupations of greater stressfulness, but also that heavy smoking is more frequent when tensions increase (fig. 2).

Obviously, if smoking is assumed to be an important factor in early disability and death from coronary attacks, and if the causative factor is something toxic in the tobacco, then we should expect to find the lowest occurrence of coronary attacks among persons who never smoked, a somewhat higher occurrence in those who have stopped, and increasingly high occurrence rates with advance in current exposure to the harmful elements in tobacco.

Our results do not conform to this hypothesis. In our series those who reported never to have smoked showed a greater frequency of heart attacks than those who stopped smoking before their attack or before the time of the questionnaire, if there was no attack (fig. 3).

These findings cast doubt upon the alleged role of smoking in the causation of coronary heart disease. The recognition of the importance of emotional factors in initiating or precipitating coronary attacks permits a logical explanation for the unexpectedly and paradoxical low occurrence of heart disease observed in former smokers.

The ability of such individuals to terminate the smoking habit reflects their unusual capacity for adapting to the stress of life and offers an explanation for their diminished vulnerability to coronary attacks.

From our studies to date it appears quite clear that tobacco consumption alone does not differentiate the smoker from the nonsmoker. There are marked differences in hereditary, constitutional, and environmental factors, between these groups, which must be considered in the interpretation of any scientific data. New studies will undoubtedly clarify these issues.

Current acceptance of a causal relationship between smoking and coronary heart attacks rests solely on statistical correlation. No evidence to date has excluded the possibility that, in the development of coronary disease, smoking may be but a symptom of the real cause. Data is presented which does not appear to conform to the concept that tobacco consumption predisposes to coronary attacks.

(Information referred to follows:)

TABLE 1.—*Incidence of various factors in coronary and control groups*

	Number	Heredity (positive)	High-fat diet	Stress and strain (occupational)	Obesity	Tobacco (30 cigarettes plus)	Exercise
		Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
Coronary group	100	67	53	91	26	70	58
Control group	100	40	20	20	20	35	60
Ratio		1.7 to 1	2.7 to 1	4.6 to 1	1.3 to 1	2 to 1	1 to 1

CORONARY PREVALENCE BY AGE AND STRESS GROUP

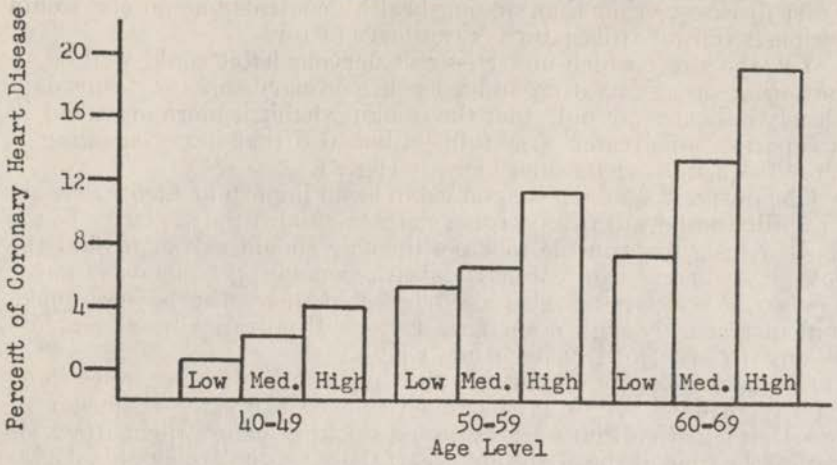


Figure 1.

SMOKING INCIDENCE BY STRESS GROUP

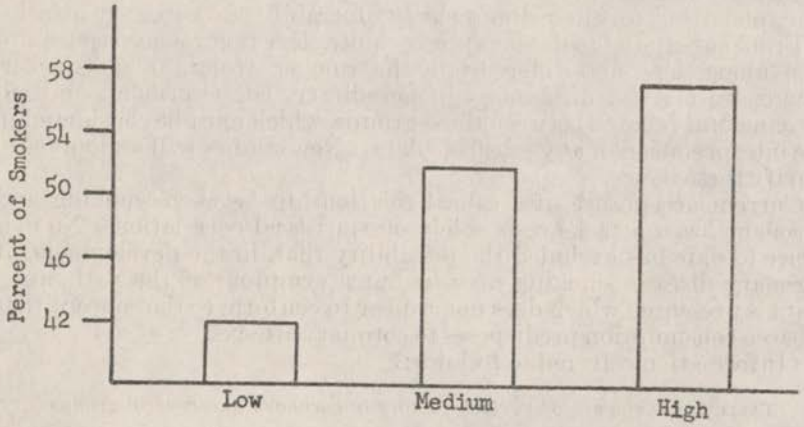


Figure 2.

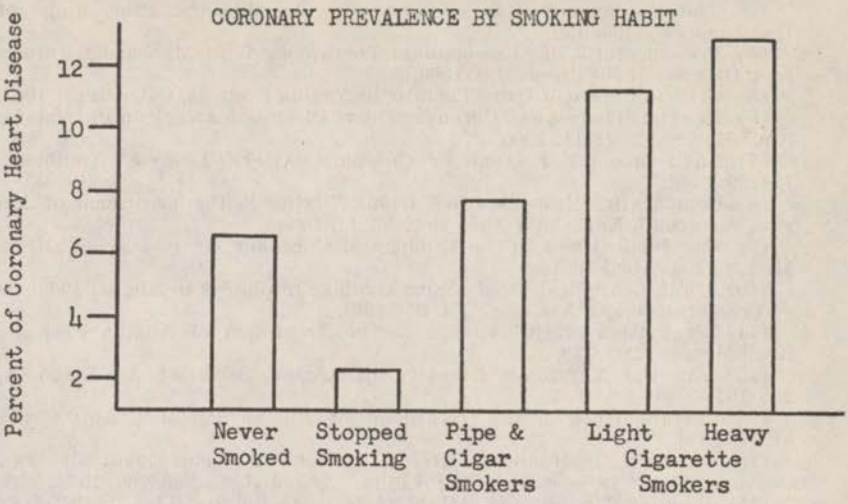


Figure 3.

CURRICULUM VITAE OF HENRY I. RUSSEK, M.D., STATEN ISLAND, N.Y.

1. Graduate of Royal College of Physicians and Surgeons, Edinburgh, Scotland, 1936.
2. Internship, Caledonian Hospital, Brooklyn, and U.S. Public Health Service Hospital, Staten Island, 1936–38.
3. Residency in Medicine, U.S. Public Health Service Hospital, Staten Island, 1938–41.
4. Postgraduate professional training: Harvard University, August to September 1939, cardiovascuar disease; Harvard University, July 1940, endocrinology; University of Pennsylvania, 1941, cardiovascular disease; University of Cincinnati, 1942, cardiovascular disease.
5. Chief of the Cardiovascular Service, U.S. Public Health Service Hospital, 1941–46.
6. Director of cardiovascular research, U.S. Public Health Service Hospital, 1946–54.
7. Consultant in cardiovascular disease, U.S. Public Health Service Hospital, 1956 to present.
8. Consultant in cardiovascular disease, Peninsula General Hospital, 1955 to present.
9. Senior attending in cardiovascular disease, St. Barnabas Hospital, Bronx, N.Y., 1964.
10. Associate cardiologist, Sea View Hospital, Staten Island, N.Y.
11. Fellow American College of Physicians, 1945.
12. Fellow Council on Clinical Cardiology, American Heart Association, 1963.
13. Fellow American College of Chest Physicians, 1952.
14. Fellow American College of Cardiology, 1952.
15. Fellow International College of Angiology, 1962.
16. Fellow American Geriatrics Society, 1962.
17. Diplomate of the American Board of Internal Medicine (cardiovascular disease), 1943.
18. Treasurer of the American College of Cardiology, 1961.
19. Senior member American Federation of Clinical Research and American Therapeutic Society.
20. Member, Harvey Society, 1961.
21. Publications in the cardiovascular field:

(1) Interrelationship between tobacco consumption, emotional stress and coronary heart disease, Geriatrics, June 1964.

(2) Current Myths and Realities in Anticoagulant Therapy, Coronary Heart Disease, Medical Clinics of North America, March 1964.

(3) The Therapeutic Role of Coronary Vasodilators, Proceedings of Hahneman Symposium.
(4) Present Status of Anticoagulant Therapy in Acute Myocardial Infarction, Diseases of the Chest, May 1963.
(5) Critical Choice of Drug Therapy in Angina Pectoris, GP, August 1963.
(6) Emotional Stress and Coronary Heart Disease in American Physicians, Am.J.Med.Sc., 240:711, 1960.
(7) Environmental Factors in Coronary Artery Disease, Angiology, 12:239, 1961.
(8) Comparative Responses to Various Nitrites in the Treatment of Angina Pectoris, J. Kan. C.SW Clin. Soc., 36:14, 1960.
(9) Emotional Stress in the Etiology of Coronary Heart Disease, Minn. Med., p. 154, April 1961.
(10) Clinical Application of Amino Oxidase Inhibitors in Angina Pectoris and Hypertension, J. Am. Ger.S., 9:426, 1961.
(11) Evaluation of the Nitrites in the Treatment of Angina Pectoris, Am.J.Med.Sc., 239:478, 1960.
(12) Are the Xanthines Effective in Angina Pectoris? Am.J.Med.Sc., 239:187, 1960.
(13) Meprobamate in the Treatment of Angina Pectoris, Am.J.Card., 3:547, 1959.
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Dr. RUSSEK. Thank you.

Mr. ROBERTS. Thank you, Dr. Russek. Concerning your studies of coronary prevalence by age and stress groups shown in figure 1, I would like a little explanation of the low, medium, and high in the 40- to 49-age group.

Dr. RUSSEK. Yes, sir. The low stress group shown in this graph were represented by the patent attorney, the dermatologist, the security analyst on the New York Exchange, and the periodonist in the field of dentistry. These groupings were all predetermined before we undertook our study.

Independent judges classified these groups into various stress categories.

Mr. ROBERTS. What reasons could you give for selecting these particular groups? How do they show any more as to stressfulness of occupation or any less, than any other group you might have selected?

Dr. RUSSEK. This was the decision of the judges after a consideration of the hours at work, the demands placed upon the practitioner or specialist, the number of deadlines, of unexpected emergencies, and the financial pressures in each case. The specific categories were selected in advance because of the belief that there were obvious differences, for example, between a specialist in skin diseases who has fairly regular hours of work and a general practitioner of medicine who is called at all hours of the day and night and who has no very predictable way of life.

Mr. ROBERTS. It seems that the greater the specification the less stressfulness of occupation. Does that follow?

Dr. RUSSEK. To some extent this is true. When a man knows "more and more about less and less" he is more confident to deal with the problems that arise than if he tries to keep abreast of an ever-increasing general field.

Mr. ROBERTS. It seems that in the medical, dental, and legal fields, the general practitioner is apparently under more stress than the men in more specialized categories.

Dr. RUSSEK. Yes, sir. This was prejudged to be the case and was found to correlate as far as coronary heart disease prevalence was concerned in our surveys. In fact, the U.S. general practitioner of medicine appears to be the most coronary prone individual in the world as far as we could determine.

Mr. ROBERTS. Mr. Springer.

Mr. SPRINGER. I want to see if I can reduce this to the simplest terms. In a coronary, what is the one most outstanding physical phenomenon or attribute that is likely to cause it? Is it stress, physical excitement, or what?

Dr. RUSSEK. Sir, it is heredity followed by a high fat diet followed by emotional stress. Emotional stress greatly compounds the lethalness of a bad heredity and a high fat diet.

Mr. SPRINGER. In other words, it is your feeling that heredity is the leading factor?

Dr. RUSSEK. Yes, sir. If we could do something about that we would really have a good start.

Mr. SPRINGER. Heredity seems to be, if not the top factor, at least it is—the way I understand it from your testimony and Dr. Burford's—probably about the biggest factor you may have in cancer, too. Is that true?

Dr. RUSSEK. There have been, to my knowledge, a number of studies that have refuted the idea that heredity is very important in cancer. But I am not an authority on the subject. In coronary diseases hereditary predisposition is a very strong factor.

Mr. SPRINGER. Is that hereditary factor the fact that the parent might have had a bad heart or bad constitution?

Dr. RUSSEK. Yes, sir. Often the parents and grandparents have had coronary disease rather early in life.

Mr. SPRINGER. This is therefore a terrible proposition?

Dr. RUSSEK. The predisposition tends to be inherited. High blood cholesterol, which is a predisposing factor, is often present in the coronary-prone.

Mr. SPRINGER. That goes with it.

Dr. RUSSEK. That often goes with it.

Mr. SPRINGER. With the heart structure itself.

Dr. RUSSEK. It often goes with this inherited tendency to early coronary heart disease. There are entire families that have elevated blood cholesterol.

Mr. SPRINGER. The second one would probably be obesity.

Dr. RUSSEK. We have found that obesity is not a significant factor in coronaries.

Mr. SPRINGER. I thought you said too much food.

Dr. RUSSEK. High fat in the diet.

Mr. SPRINGER. That is probably the second most important factor.

Dr. RUSSEK. Yes, sir.

Mr. SPRINGER. The third most important factor would be stress and strain mentally.

Dr. RUSSEK. That is correct.

Mr. SPRINGER. What about a man who works hard 8 hours a day in manual labor?

Dr. RUSSEK. In our young coronary group we found that just as many of the young persons afflicted with coronary attacks had been quite active in their work and leisure activities as in the control group. We could find no relationship between physical activity and precocious coronary heart disease.

Mr. SPRINGER. Now I want to ask you a question here, sort of a free off-the-cuff opinion, for a layman. What effect does exercise have on the heart or the whole question of preventing or adding to the coronary?

Dr. RUSSEK. I think the main value of exercise is that in many instances it is a good antidote for emotional stress. If a man has been pent up, in the office all day, tense, nervous, and anxious, if he can get home and do something physically arduous, it is helpful in resolving some of his anxieties. Whether it be a set of tennis or taking a long walk or chopping wood, this is a good way of expressing one's feelings and resolving inner tensions.

Mr. SPRINGER. I take it in this that you consider this mental stress and strain, anxiety, to be a pretty important function.

Dr. RUSSEK. In Western society it is extremely important. In other societies even with a high fat diet, there is a much lower prevalence of coronary disease than we have in the United States.

Mr. SPRINGER. Who does?

Dr. RUSSEK. Other countries with a high fat diet do not have the pace we have here. For example, in France the prevalence of coronary heart disease is about one-seventh that of the United States. My personal belief is that the Frenchman is more immune because he takes off 3 hours in the afternoon, from 1 to 4 for a siesta and also drinks

considerable wine which is his tranquilizer. I think this helps a lot. Whereas the American businessman keeps going all day long and tries to put more work in the shortened workday. Even his leisure is more regimented and often more stressful than his work.

Mr. SPRINGER. You do not seem to find any causal relation that you can measure between smoking and coronary disease.

Dr. RUSSEK. No definitive answer has been available in our studies. In fact, there is a contradictory finding; namely, that the people who have smoked and stopped in all of our data show a lower prevalence of coronary attacks than people who never smoked.

I think that people who can smoke and stop without the doctor ordering them to do so can adapt to stress better than other people can. Because of their greater adaptability to stress they are less vulnerable to coronary disease.

Mr. SPRINGER. Thank you.

Mr. ROBERTS. Thank you, Mr. Springer. Mr. Rogers?

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Doctor, I was wondering, is a possible cause for heart trouble to have a system where the heart has to work hard at pumping out the blood. In other words, if your capillaries are constricted, does this have a tendency to bring on a heart attack?

Dr. RUSSEK. No, sir. A heart attack is produced primarily by changes within the wall of the coronary arteries. We are speaking about the degenerative type of coronary disease.

Mr. ROGERS of Florida. Not overworking the heart?

Dr. RUSSEK. No, sir.

Mr. ROGERS of Florida. I heard a lecture given by a doctor who was supposed to be quite an expert saying that when one smokes and inhales, that by placing the finger under a microscope where you could see the capillaries, when the person inhaled you could see the capillaries constrict. He drew the conclusion that this would be very hurtful to the person.

Dr. RUSSEK. This is true only of the arteries in the extremities, the arms and legs. But studies have been done in which the coronary arteries have been visualized by means of a dye and moving pictures taken of the movement of the heart and flow of blood through the coronary arteries with the patient inhaling a cigarette and it was found that no constriction of the coronary arteries occurred.

This is well documented and well accepted. Nicotine does not constrict the coronary arteries.

Mr. ROGERS of Florida. Just the capillaries?

Dr. RUSSEK. The superficial arteries of the legs and the hands can be constricted by nicotine. In other words, the smoking of one cigarette can raise the blood pressure about 10 millimeters. If you have 150 blood pressure, if you smoke one cigarette it might go up to 160 on the average. The heart rate might be quickened by 10 or 12 beats. But to the normal heart this is negligible.

Mr. ROGERS of Florida. What would two packs a day do?

Dr. RUSSEK. Strangely enough after the first two cigarettes nothing happens to the blood pressure and the pulse. The ganglia of the nervous system seem to dump all the adrenaline into the bloodstream and you get a maximum response. After the second cigarette nothing happens because all of the epinephrine has been liberated into the bloodstream.

Mr. ROGERS of Florida. So it does not matter how many cigarettes you smoke as far as the heart is concerned.

Dr. RUSSEK. That is correct.

Mr. ROGERS of Florida. Why is it then that there are less deaths when people stop smoking from heart attacks?

Dr. RUSSEK. There appear to be less deaths among the people who once smoked and stopped for the reason, as I tried to explain, that the person who can smoke heavily and even for years and suddenly stop of his own free will, is an individual who has control of his emotions and can often adapt to the difficulties in his life.

The persons who is a heavy cigarette chain smoker, who is "hooked" on tobacco, can't get off it. This is usually an individual who cannot handle the stresses of his life. So these are two different types of people. We should not compare sheep with goats. They are different individuals. Simply to say that one smokes and one does not smoke and therefore something happens to the one that smokes and does not happen to the one who does not smoke, is not a scientific observation. Because there are many other variables involved in such a comparison.

Mr. ROGERS of Florida. Would you take it to be true that people who have a tendency to nervousness have a tendency to smoke as an outlet?

Dr. RUSSEK. Very definitely. The more stressful the occupation, the higher the prevalence of cigarette smoking in our studies. Not only that, the more stressed an individual becomes the greater is his consumption of tobacco. I am sure that anybody who smokes has recognized this fact. When things pile up he tends to smoke more. When his tensions ease up he tends to smoke less.

Mr. ROGERS of Florida. Do you recommend for your heart patients to smoke or not to smoke?

Dr. RUSSEK. I recommend for my heart patients not to smoke because I feel anything I can do to reduce the load upon their hearts is in their favor. Since I have said smoking of two cigarettes can elevate the blood pressure to some extent and increase the heart rate, and this is the very thing we are trying to prevent in our heart patients, I seek to avoid all the things that would increase the work of the heart.

Mr. ROGERS of Florida. So it is probably better for a person with heart trouble not to smoke?

Dr. RUSSEK. Yes.

Mr. ROGERS of Florida. I would draw that conclusion from your figure 3 where you show cigarette smokers, heavy and light, having a rather high coronary prevalence. Pipe and cigar smokers having less. Never smoked, down to about second. Those who have stopped smoking, down to a little over two.

The chart does show, and I do not know that it causes it, that there is some connection between those who smoke and a coronary prevalence.

Would that be a correct conclusion to draw from this figure 3?

Dr. RUSSEK. Yes; that is correct. But also one must not lose sight of the fact that the pipe and cigar smoker is quite a different person than the man who is smoking 40 or more cingarettes a day. As you well know, a man who smokes a pipe and who spends most of the time filling the bowl is quite different from a person who can't wait to get another cigarette into his mouth. These are different individuals.

Therefore, as I have said it is not just a question of quantitation of tobacco, it is a question of what kind of individuals we are dealing with.

Mr. ROGERS of Florida. I was just drawing the conclusions from the numbers you show on your chart of those who smoke and those who stopped smoking are less than those who smoked as far as coronary prevalence.

Dr. RUSSEK. Yes, sir. If there were a linear correlation between the amount of smoking, and the exposure to tobacco and the development of coronary disease, that category of stopped smoking should have fallen into line with the other bars on the graph. But you notice that it is paradoxically depressed. This requires explanation.

Why should people who have smoked and stopped have less coronary disease than people who never smoked? This is not an isolated observation. Even the Framingham and Albany studies have shown no difference between those who have never smoked and those who have stopped smoking. They admit there is no difference in coronary heart disease prevalence. This then is something that must be reckoned with in attempting to interpret the statistics.

Mr. ROGERS of Florida. Thank you.

Mr. ROBERTS. Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

I sincerely hope you will not bill the committee for all this free medical advice you are giving. Do you know Dr. Burford?

Dr. RUSSEK. No, sir; I do not.

Mr. YOUNGER. The format of your testimony and Dr. Garland who is to come, appears to be exactly the same. Were these printed or mimeographed at the same place. What causes all of these to be exactly the same?

Dr. RUSSEK. I submitted a statement quite similar to the one before you with a few differences. I said, for example, "the undersigned" is so and so and I was told perhaps it would be better before a congressional committee to say rather than "the undersigned," "I am." That was the only change I made in my statement.

Mr. YOUNGER. You submitted them to whom?

Dr. RUSSEK. To an attorney for one of the tobacco companies. I showed him the statement that I would give.

Mr. YOUNGER. Are you employed in any way, shape, or form by any tobacco company?

Dr. RUSSEK. In no manner whatever. This statement that I have given here I gave at the AMA meeting last week in San Francisco.

Mr. YOUNGER. All of them start out in exactly the same format. My experience with witnesses before the committee, I rarely find that. I was just wondering whether there was any correlation between the format that we have and the position that all of you take in regard to smoking?

Dr. RUSSEK. No, it had nothing whatever to do with this. I think it was just a matter of trying to conform to protocol or to the manner in which this should be presented to this body.

Mr. YOUNGER. Who mimeographed yours?

Dr. RUSSEK. I imagine it was mimeographed by Mr. Hardy of one of the tobacco corporations.

Mr. YOUNGER. That is what I am trying to get at.

Dr. RUSSEK. I did not have it mimeographed personally.

Mr. YOUNGER. Evidently they were all mimeographed by the same company.

Dr. RUSSEK. I presume so. I do not know about the others but I know that mine was.

Mr. YOUNGER. Thank you very much.

Mr. ROBERTS. The gentleman from North Carolina.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Dr. Russek, I want to thank you for a very fine statement here today and say you certainly enlightened me a great deal on what are the ins and outs of the problem we have to wrestle with. You also have splendidly pointed out that it is a very deep and complex matter. I would like to ask you if you were invited to testify or to advise with the Surgeon General's Committee which came up with the report on smoking and health?

Dr. RUSSEK. I was not invited. I did have correspondence with the Surgeon General. I have written to him about the work I was doing. I have read that the Surgeon General was seeking to find a group of persons who had never done work in this area so they could get a fresh start in this problem. I, having been in this work for a number of years, had already formulated opinions and ideas from my findings. I know the Surgeon General and I respect his point of view in that regard.

Mr. KORNEGAY. You mean the people that got out this report on smoking and health had never had any experience in the field prior to the time they took on their duties with this committee?

Dr. RUSSEK. Yes, sir; this is my understanding.

Mr. KORNEGAY. Either in the area of heart disease, cancer, or other malignancies or diseases?

Dr. RUSSEK. I think they undoubtedly had a background in heart disease and cancer but they had not studied the tobacco problem in terms of these diseases.

Mr. KORNEGAY. In other words, we can conclude from that, then, that there were certainly no experts on that 15-man committee as it related to smoking and health?

Dr. RUSSEK. That is probably correct. What these men did was essentially to analyze the work that had been done.

Mr. KORNEGAY. And evaluate that?

Dr. RUSSEK. And evaluate that, rather than base it on their own past work.

Mr. KORNEGAY. I think it has been admitted several times that there is no new research in this report.

Dr. RUSSEK. Yes, sir.

Mr. KORNEGAY. Have you read or studied the report?

Dr. RUSSEK. I have studied predominantly the heart component of this report.

Mr. KORNEGAY. Based upon your knowledge in the area of smoking and heart disease, do you feel, sir, that there is sufficient evidence in this report, or sufficient evidence available anywhere to justify and warrant the labeling of cigarettes as being dangerous to health in that the smoking would cause death by cancer or other diseases, and among those other diseases I ask you specifically about heart disease?

Dr. RUSSEK. I think there has only been an inference that this is possible. I think much more work is necessary before one can state that it can cause death.

Mr. KORNEGAY. In other words, you will agree that much more research needs to be done?

Dr. RUSSEK. Yes, sir.

Mr. KORNEGAY. Before such a statement should be made?

Dr. RUSSEK. Yes, sir.

Mr. KORNEGAY. Thank you very much.

Mr. ROBERTS. The gentleman from Texas.

Mr. PICKLE. Doctor, you may have already answered this, but do you smoke?

Dr. RUSSEK. No, sir; I do not.

Mr. PICKLE. Have you ever smoked?

Dr. RUSSEK. I used to smoke, for a brief period, when I was 18 or 19 years of age. I happen to be one who is hypersensitive to tobacco. If I smoke a cigarette I begin to cough and gag and get hoarse. People like myself would do well to avoid smoking. There are some of this sort in our population.

Mr. PICKLE. That is all, Mr. Chairman.

Mr. ROBERTS. The gentleman from South Carolina.

Mr. WATSON. Mr. Chairman, I should like to commend the doctor on what I consider to be one of the most practical bits of testimony that we have had here. It seems most reasonable the way you have outlined it, Doctor. Especially as one who was engaged in the general practice of law, a country lawyer, so to speak, I am happy to have medical support of my contention all along that the general practitioner, whether medical or legal, has the greatest stress and strain of any man.

I hope your testimony will be sufficiently circulated so that the clients and patients will realize that we have a shorter life expectancy and will reward us accordingly.

Unfortunately, and I am not making a speech today, they are inclined to reward more substantially those of the specialists rather than the generalized field, feeling they have a higher degree of ability.

One question I would like to ask you: You conducted this survey and circularized 12,000 people in the professions?

Dr. RUSSEK. Yes, sir.

Mr. WATSON. Is the tobacco industry sponsoring and financing this study?

Dr. RUSSEK. The first study that we did on the hundred young coronary patients was done by my associate and myself unsponsored. The first study of 4,000 medical specialists and general practitioners and also of the dentists and attorneys was done on our own. But last year the Council on Tobacco Research asked us if we would care to have their support for a continuing study and we said we would desire this. We then undertook a study of security traders and security analysts on the New York Stock Exchange. This was the basis of our report at the AMA last week, not only the new group we had studied but also the backlog of the other groups. We pooled all our data on tobacco for these 14 occupational categories.

Mr. WATSON. In other words, we can conclude that the tobacco industry itself has expended large sums of money in order to help

arrive at some logical conclusion as to the causal relationship between tobacco and heart disease?

Dr. RUSSEK. Yes, sir; I hasten to add with absolutely no strings attached.

Mr. WATSON. Thank you very much.

Mr. ROBERTS. Thank you, Doctor. Next we will call Dr. L. H. Garland, radiologist.

STATEMENT OF DR. L. HENRY GARLAND, RADIOLOGIST, CLINICAL PROFESSOR OF RADIOLOGY, UNIVERSITY OF CALIFORNIA MEDICAL SCHOOL, SAN FRANCISCO, CALIF.

Dr. GARLAND. Mr. Chairman, members: I appreciate the opportunity of appearing before you. If you wish me to condense my remarks or shall I read the statement?

Mr. ROBERTS. It would be very nice if you would summarize your statement.

Dr. GARLAND. Smoking and Health. The interrelationships of smoking and health are complex. The subject lends itself more to questions than to easy answers.

1. Many of the reports contain contradictory data. For example, British males are reported to have about twice the incidence of lung cancer of U.S. males, and yet to smoke only about one-half as many cigarettes per capita. This is a 4 to 1 difference. Is it due to genetic factors? To atmospheric pollution?

2. U.S. males in the lower economic brackets are reported to suffer twice the incidence of primary lung cancer of U.S. males in the upper economic brackets, although males in the lower economic brackets are reported to smoke less. What causes this 2 to 1 difference? Is it nutritional factors?

3. In many of the studies interpreted as implicating cigarette smoking as a health hazard, the death rates in the cigarette smokers actually turn out to be lower than the death rates in U.S. males as a whole. For example, the age adjusted death rates per thousand man-years for cigarette smokers of one pack or more daily, in North America (age 35 and over) average 21.5, while for U.S. males as a whole for a comparable year (1960) they average 22.9.

Either it is a fact that the cigarette smoking males have a slightly lower death rate than U.S. white males as a whole, or it is a fact that the sample of the male population used in many of these studies is not representative of U.S. males as a whole.

The above figures are taken from the 1964 Report to the Surgeon General. The following excerpts from pages 94–96 are therefore pertinent:

> None of the populations was designed, in particular, to be representative of the U.S. male population. Any answer to the question "to what general populations of men can the results be applied?" must involve an element of unverifiable judgment.
>
> (Studies) suffer from the difficulties that the populations studied are hard to define, that the smokers and nonsmokers were recruited by a large number of volunteer workers, and that completeness in the reporting of deaths was hard to achieve, since this depends on reports from volunteers (p. 95).
>
> So far as interpretation of results is concerned, the discrepancy raises two points. It is clear that the seven prospective studies involve populations which

are healthier than U.S. males as a whole. Secondly, the low death rates for nonsmokers suggest the possibility that the studies recruited unusually healthy groups of nonsmokers. (p. 96).

No generalization can safely be made based on studies of such unrepresentative populations.

4. In connection with bladder cancer: Some writers believe that this is causally related to heavy cigarette smoking. It is noteworthy therefore that at the 1963 American Public Health Association meeting, a distinguished proponent of this hypothesis observed that "there are insufficient data to warrant conclusions, and the available data are often contradictory." It seems to me that there are comparable levels of incompleteness or contradictoriness in the lung cancer and chronic bronchitis data.

5. In connection with coronary artery disease, the report stresses that the causative role of cigarette smoking in deaths from this disease is not proven, and that while male cigarette smokers do have higher reported death rates from coronary artery disease than do nonsmokers "it is not clear that the association has causal significance" (p. 32–39).

At the American Heart Association annual meeting in 1963 many speakers opined that tobacco probably has a deleterious effect on the heart, but that this effect is not easy to pinpoint. But in a study of some 6,000 Brooklyn men, Spain found that smoking habits could not be related to heart disease; Talbott reported that cigarette smoking actually speeded the clearing of lipids from the blood after a high-fat meal; Kannen concluded that the evidence does not indicate that cigarette smoking contributes to the underlying pathology of coronary heart disease (although it may be a serious complicating factor under certain specified conditions). Cannot the data from which these discordant statements arise be submitted to biostatical review for apparent significance?

6. Since most of the evidence incriminating cigarettes is statistical, all serious students of the problem should, I believe, read and reread the qualifying comments in the report to the Surgeon General (pp. 94–97). And note that:

Statistical methods cannot establish proof of a causal relationship in an association. The causal significance of an association is a matter of judgment which goes beyond any statement of statistical probability.

7. There are many other unanswered questions:

(a) Why has the reported prevalence of oral cavity cancer and pharynx cancer declined, despite the higher intensity of exposure to these areas to cigarette smoke in the last 30 years?

(b) Would a large study employing trained and tested investigators yield the same data as that commonly quoted from many of the studies in this country?

(c) Is the increase in primary bronchial cancer really as great as commonly quoted? The study by Gilliam quoted on page 140 of the report to the Surgeon General demonstrates how that increase in reported U.S. bronchial cancer may be much less than claimed. This study shows that if in 1914, 2 percent of the deaths certified to tuberculosis were really due to lung cancer, then the increase in primary bronchial cancer between that year and the year 1950 would be about eightfold for males and only thirteenfold for females—figures vastly lower than the commonly quoted increase.

A subsequent study by Gilliam noted a declining rate of increase in reported bronchial cancer, which is not consistent with reported increased cigarette consumption if cigarette smoking is regarded as causing lung cancer. (Gilliam, etc. Cancer 14(3), 622–628, May–June 1961.)

(d) My own studies on the locus of origin of primary bronchial cancer indicate that almost two-thirds of them—precisely 60 percent—arise in portions of the bronchial tree removed from the main bronchi (where the concentrations of cigarette smoke are supposed to be greatest in the lungs).

(e) The peak incidence of primary bronchial cancer in the U.S. males is around age 57 years, both in smokers and nonsmokers, and this peak tends to be maintained irrespective of the amount smoked or when the cigarette smoking allegedly commenced. These are extraordinary findings which in my opinion seriously question the cigarette hypothesis.

Well designed research programs should help to provide the answers to many of these questions, and should, I believe, be pursued. In the meantime, the established facts in my opinion are:

(a) That medical science does not yet know the cause of cancer, or emphysema, or atherosclerosis, and

(b) That it is unlikely that a single exogenous factor such as cigarette smoke should be a prime cause of these three diverse disorders.

It is my understanding that these hearings pertain to labeling. If I may be permitted to express some comments, I should like to do so:

1. Cigarettes are said by some to be potentially lethal when used to excess. There is little doubt that automobiles, liquor, wine and, indeed, some say even certain dairy products, are lethal when used negligently or to excess. To be consistent, should we not so label all these products? Where does it end?

2. In the light of the known perversity of human nature, is such labeling apt to be more of a source of attraction than deterrence? Is it any substitute for education or commonsense moderation?

3. I hold no brief for the tobacco companies nor their advertising, but I notice no national organization campaigning to curb the sale or advertising of alcohol, cars, guns, or other lethal products, each of which has the evil that victims of its use, or misuse, are frequently innocent bystanders.

If smoking hurts, it hurts only the smoker; it should be at the bottom of the list of dangers from which a free people must be protected. When I am safe from drunken drivers, careless hunters, and spray-happy farmers, there may be some logic in saving me from myself. (Dorothy Samuel, Saturday Review, February 22, 1964.)

(References referred to follow:)

REFERENCES FOR FIRST SIX NUMBERED PARAGRAPHS

1. Dean, G. Complex etiology of lung cancer. Acta Un. Int. Cancer. 19, 721, 1963.
2. Dorn and Butler. U. S. Public Health Service Monograph No. 56, 1959.
3. Marketing Research Report No. 189, U.S. Department of Agriculture, July 1957, page 63.
4. Report to the Surgeon General of the United States, 1964, page 95, table 15.
5. Lilienfeld, A. M. Medical Tribune, 12, 2, 63, page 1.
6. American Heart Association Convention Report. Modern Medicine, 11, 25, 63.

Dr. GARLAND. I would like your permission to correct the last page which my secretary failed to catch. The first line should be reference for the five numbered paragraphs, not six. References 2 and 3 should both be regarded as reference 2 in two parts, and therefore the next three should be renumbered, 3, 4 and 5.

I am sorry I did not catch this before. Thank you very much.

Mr. ROBERTS. Thank you, Doctor. I also want to thank you for attaching the biographic data which certainly qualifies you to appear before this committee and make your statement.

I am deeply grateful to you for a very brief statement. I have no questions.

The gentleman from California.

Mr. YOUNGER. Thank you, Mr. Chairman.

I am glad to welcome a Californian here before the committee, I enjoyed your statement very much. Did you submit this statement to an attorney or somebody?

Dr. GARLAND. Yes, Mr. Ed Jacob who I conferred with on lung cancer problems for some years asked me if I would prepare a statement in case I might be invited to appear before you. I mailed it to him because it would save me doing all the mimeographing in San Francisco.

Mr. YOUNGER. This was designed especially for the committee, it was not a paper you read for the medical society?

Dr. GARLAND. No, sir. But many of the remarks have been embodied in some papers I have given.

Mr. YOUNGER. Thank you very much, Doctor.

Mr. ROBERTS. The gentleman from Florida.

Mr. ROGERS of Florida. Thank you, Mr. Chairman.

Doctor, you are a practicing physician?

Dr. GARLAND. Yes.

Mr. ROGERS of Florida. Do you recommend to your patients to smoke or not smoke when they have cancer?

Dr. GARLAND. Fortunately, very few of them ask me this question. I am a radiologist and I see patients by referral for diagnosis and treatment. Their family doctor is apt to have answered this question. If they should have asked me, since most of the patients with lung cancer I see are over age 55, I tell them it is a matter of taste. If the smoking is harmful and if they have done it for 35 years, I see no valid evidence that suddenly stopping now is going to change things very much. So if they enjoy it, I do not see why they shouldn't smoke.

Mr. ROGERS of Florida. If they had not done it, what would you tell them?

Dr. GARLAND. If they had never smoked?

Mr. ROGERS of Florida. Yes.

Dr. GARLAND. If they were economically able to afford an occasional pipe or cigar and if they found it was moderately tranquilizing as I do, I might suggest that they smoke occasionally. I would also urge them not to do anything in excess.

Mr. ROGERS of Florida. What about cigarettes?

Dr. GARLAND. I think a few cigarettes are perfectly nonnoxious.

Mr. ROGERS of Florida. From the prior testimony, I understood the first two raised the blood pressure.

Dr. GARLAND. I must tell you this. I happened to see this movie. Dr. Likoff of Philadelphia showed it last week in San Francisco. These are X-ray movies of adult heart with contrast medium in the coronary arteries. It has both normals and people with coronary disease. It had two sets of tests on them. One after drinking 2 ounces of whisky and one after smoking two cigarettes. There was no change in the caliber of the coronary arteries much to his surprise. It is true that smoking quickens the pulse for a few minutes and it is true that it raises the blood pressure very slightly. But this has no significant effect—two cigarettes—on the X-rays he showed us.

Mr. ROGERS of Florida. From what I understood, after you smoked the first two you could smoke another pack or two and it would have no effect.

Dr. GARLAND. This is really beyond my field. I heard the last witness but I am not competent to answer this.

Mr. ROGERS of Florida. Thank you very much, Doctor.

Mr. ROBERTS. The gentleman from North Carolina.

Mr. KORNEGAY. Thank you, Mr. Chairman.

Dr. Garland, I would like to join my colleagues in thanking you for coming here and making a very fine statement which, certainly to me, and I hope to the committee, will be very useful in our deliberations. Have you read or studied the Surgeon General's report on smoking and health?

Dr. GARLAND. I have read it from cover to cover, sir.

Mr. KORNEGAY. Based upon the findings in the report and statistical information which it contains, do you feel there is sufficient evidence to warrant the labeling of cigarettes as the FTC now proposes; that is, by placing upon each package that cigarette smoking is dangerous to health and may cause death from cancer or other diseases?

Dr. GARLAND. First of all, if I might qualify my answer, the conclusions in the Surgeon General's report do not, in my humble opinion, fit the body of the text. The body of the report, as I pointed out in my statement, is replete with qualifications and exceptions. The conclusions are quite definite.

To me they are not warranted at all. As to this business of labeling, I am not enough of a psychologist and I am not old enough to know what good it would do. I suspect it would increase the amount of smoking and not decrease it.

Mr. KORNEGAY. That is a very cogent observation. My question is whether or not there are sufficient scientific findings in the Surgeon General's report on smoking and health to warrant the conclusion that it is necessary in the protection of the American people's health to label cigarettes and advertising in the manner I quoted?

Dr. GARLAND. No.

Mr. KORNEGAY. Thank you very much.

Mr. ROBERTS. The gentleman from South Carolina.

Mr. WATSON. Doctor, on page 5, your subsection (d), you state that your own studies "on the locus of the origin of primary bronchial cancer indicate that almost two-thirds of them arise in portions of the bronchial tree removed from the main bronchi where the concentrations of cigarette smoke are supposed to be greatest in the lungs."

I guess this is the lawyer coming out of me and I am going to jump into an area where angels should fear to tread.

Dr. GARLAND. I accept the correction in advance.

Mr. WATSON. The grammatical correction.

Dr. GARLAND. Yes.

Mr. WATSON. We will note that. I was going to jump in and ask you a question. Am I to suppose that the main bronchus is like, the trunk of the tree, and smaller ones branch out from that? Is that the picture you are trying to convey?

Dr. GARLAND. The simplest way to picture it is the two main bronchi, left and right. Then you have secondary bronchi, divisions of the two mains, and tertiary bronchi and quaternary and so on to the very finest degree. It had been taught in medicine that most lung cancers arose in the main bronchi or the lobar bronchi, the first or second division. Whereas in fact, we found in our study that 60 percent of them arose beyond that point.

Mr. WATSON. Would it not necessarily be reasonable to conclude that there would be the least likelihood of cancer occurring in the main bronchi because they are repeatedly cleared with fresh air taken into the lungs? On the other hand, these side bronchi would be the ones where, although ordinarily you would not place them as subject to greatest concentration of cigarette smoke being off to the side they would not be cleared as regularly of the smoking substance.

Would that be a valid layman's observation?

Dr. GARLAND. No.

There are some students of the problem who have advanced that theory. The majority of people who believe that cigarette smoke causes lung cancer talk about the concentrations of the smoke in the mucous lining of the bronchial tubes, which tends to gather around the larger bronchi in higher amounts. Especially if the cilia are damaged to "sit" there. That is why they thought it was the common location of the tumors. Your point is well taken and this might explain why we do not see more.

Mr. WATSON. I was tossing it out as strictly a layman's conjecture but I would rather rely on your expertise.

Doctor, were you consulted by the Surgeon General?

Dr. GARLAND. No.

Mr. WATSON. You were never questioned or written by him?

Dr. GARLAND. No, sir.

Mr. WATSON. Never questioned in any way, shape, form, or fashion?

Dr. GARLAND. No, sir.

Mr. WATSON. You are a former president of the Radiological Society of North America?

Dr. GARLAND. That is correct.

Mr. WATSON. Bronze Medal for Distinguished Service to the American Cancer Society?

Dr. GARLAND. That is correct.

Mr. WATSON. Yet you were still never conferred with and your opinions never sought by the Surgeon General?

Dr. GARLAND. No, sir.

Mr. WATSON. Gold Medal, American College of Radiology. Gold Medal, Radiological Society of North America. Contributed over 150 papers to various scientific and medical journals in references to diseases of the chest. Yet, the Surgeon General or this committee never saw fit to ask your opinion concerning this question?

Dr. GARLAND. In his defense, sir; there are a lot of competent doctors, and San Francisco is 3,000 miles from Washington.

Mr. WATSON. I am sure of that. But the mails travel to San Francisco and they could have made a letter inquiry.

Dr. GARLAND. That is right.

Mr. WATSON. You were never written concerning this question?

Dr. GARLAND. No, sir.

Mr. WATSON. Thank you, Doctor.

Mr. ROBERTS. Thank you, Doctor.

Dr. GARLAND. Thank you very much.

(The document referred to follows:)

SOME BIOGRAPHICAL DATA ON L. HENRY GARLAND, M.D., CLINICAL PROFESSOR OF RADIOLOGY, UNIVERSITY OF CALIFORNIA MEDICAL SCHOOL, SAN FRANCISCO; DIRECTOR, DEPARTMENT OF RADIOLOGY, SAN FRANCISCO GENERAL HOSPITAL

Consultant, Letterman Army Hospital and St. Joseph's Hospital.
Longtime clinical professor of radiology, Stanford University Medical School.
Past director, California Division, American Cancer Society.
Past chairman, Committee on Cancer Diagnosis and Therapy, National Research Council, National Academy of Sciences.
President of the following organizations and in the indicated years:
Radiological Society of North America, 1948.
California Academy of Medicine, 1957.
Recipient of the following honors:
Bronze Medal for Distinguished Service, American Cancer Society, 1954.
Gold Medal, American College of Radiology, 1960.
Gold Medal, Radiological Society of North America, 1961.
Visiting radiologist in chief, pro tempore, Peter Bent Brigham Hospital, Boston, 1961.
M. C. Sosman lecturer, Harvard Medical School, 1961.
Ross Golden lecturer, New York Roentgen Society, New York Acadamy of Medicine, 1959.
Mayo Foundation lecturer, Mayo Clinic, Rochester, Minn., 1958.
Honorary M.D. degree, University College, Dublin, Ireland, 1960.
Contributor of over 150 papers to various scientific medical journals, author of chapters or sections of several textbooks; coauthor of "Diseases of the Chest," with Corwin Hinshaw.
Member of several local, State, and National scientific societies.
Guest lecturer at same.
Additional biographic data in Who's Who, Who's Who in Medicine, American Men of Science, etc.

Mr. ROBERTS. Dr. Langston.

STATEMENT OF DR. HIRAM LANGSTON, SURGEON, CHICAGO, ILL.

Dr. LANGSTON. Thank you, sir.

Mr. ROBERTS. The committee is glad to welcome you for the hearing.

Dr. LANGSTON. I thank you for the opportunity of appearing before you and your committee. My statement is brief. I am Dr. Hiram Langston, thoracic surgeon. I was born in Rio de Janiero, Brazil, in 1912 of Southern Baptist missionary parents and educated through the sophomore year of college in local schools. I received my A.B. degree from the University of Louisville at age 18 and my M.D. degree from the same university at age 22. I then underwent 7 years of residency training in surgery and in pathology. This resulted in a master of science (surgery) degree from the postgraduate School of Medicine of the University of Michigan in 1941. I am certified by

the American Board of Surgery (1942) and a founder member of the board of thoracic surgery (1948).

During World War II, I served as a thoracic surgeon in the Mediterranean theater of operations from 1942 to 1945, rising to the rank of major, AUS. I was separate from the service in 1946. I was awarded the Army Commendation Ribbon, Bronze Star Medal, and the Order of Aeronautical Merit, officer grade, Brazilian Air Force.

I have held teaching appointments in the University of Michigan, Northwestern University, and Wayne State University at various times, being currently clinical professor of surgery, University of Illinois College of Medicine, Chicago, Ill.

I am chief of surgery at the Chicago State Tuberculosis Sanatorium, consultant in cardiopulmonary surgery at the Veterans' Administration Hospital, Hines, Ill., and civilian consultant to the U.S. 5th Army. I am on the staff of several hospitals in the Chicago area.

I am a member of various professional societies, including the American Medical Association, American College of Surgeons (fellow), American College of Chest Physicians, Western Central and American Surgical Associations, as well as the American Association for Thoracic Surgery, of which I was the secretary for 5 years between 1956 and 1961.

I am emeritus member of the board of thoracic surgery, currently a member of the Advisory Council for Thoracic Surgery of the American College of Surgeons, and representative from the American Association for Thoracic Surgery to the National Society for Medical Research.

As medical know-how has increased, clinical pictures have been analyzed more critically and disease entities of similar nature have become separated one from another. This has been true of the great group of pulmonary diseases. Tuberculosis has become distinguishable from other chronic granulomas, such as those produced by the fungi. Acute pneumonias have been classified more intimately and have become separable from disease resulting from bronchial obstruction. The various causes of bronchial obstruction have become recognizable. Among these, bronchogenic carcinoma or lung cancer has assumed preeminence. From vague recognition some 50 years ago, it has emerged as probably the commonest visceral cancer in men.

When the various faces of this disease were recognized, many sensitive persons were impressed by their number, even to suggesting a veritable epidemic. They were seized by a sense of panic.

The obvious result was a rather frantic search for some etiologic or causal factor. Among a myriad of suspects, ranging from tar roads to tuberculosis, the rising consumption of cigarettes, which seemed to parallel the increased recognition of lung cancer, was soon seized upon as a reasonable culprit.

Since the 1930's a voluminous bibliography has developed around the etiology of this disease. Frustration in applying experimental and other methods of investigation to the clarification of the problem has led to the emphasis on statistical association as the basis for the current contention that cigarette smoking is causative.

I am not versed in statistical methods and must accept what the experts in this field bring forth both for and against this concept.

It seems acceptable to me that there has been some actual increase in the incidence of bronchogenic carcinoma and that this increased number of cases is not explained solely by the development of greater diagnostic acumen on the part of the medical practitioners in this as well as other countries.

Furthermore, there appears to be very little room to doubt that there is some statistical association between cigarette consumption and the recognition of bronchogenic carcinoma. I cannot, however, take the step from statistical association to etiologic or causal factor. I do not believe that this statistical association proves causation. My reasons are primarily clinical.

I. INCIDENCE OF LUNG CANCER

A. Frequency of the disease: There is no question but that cancer of the lung has been designated with increasing frequency as a cause of death or as a clinical diagnosis over the past 50 years. We need to merely note the fact that Adler in 1912 apologized for writing a book on such an obscure subject. Now in the United States we expect several thousand deaths in the current year from this disease. Several factors can be called upon to explain this.

(1) Increased awareness of this as a fundamental cause of various pulmonary disorders. Since in most instances the cancer causes obstruction to the bronchus the resultant pneumonitis, blood spitting, et cetera, has no doubt in the past been called and coded as pneumonia, tuberculosis, et cetera. This experience seems to be shared by virtually all of the reporting world.

(2) Increased longevity. Better control of infectious diseases, accounting for high mortality in the younger age groups, has allowed an increased segment of the population to reach the so-called cancer age. This is almost certainly the reason why in tuberculosis sanitoriums we see this disease much more often today than previously.

(3) There may well be an actual increase in the number of lung cancers. At the Veterans' Administration Hospital, Hines, Ill., where I am consultant in thoracic surgery, we have seen a definite rise in frequency of these cases on our wards in spite of the fact that Hines has changed from a national center for referral of such cases to a regional one, consequent to the expansion of the Veterans' Administration system. For example, in 1952 when Hines was a center for regional referrals of lung cancer in the greatly expanded Veterans' Administration system, we admitted 190 cases as opposed to 180 cases in 1945 when it was a recipient of national cases, under the old Veterans' Administration setup. The incidence has generally continued to rise in spite of the advent of two thoracic surgical services in the new Veterans' Administration hospitals in the immediate area.

In sharp contrast the case incidence of carcinoma of the colon and rectum, stomach, larynx, and esophagus, tended downward. The absence of an increase in larynx cancer corresponding with the apparent increase in lung cancer when both sites are equally exposed to cigarette smoke, casts further doubt as to the validity of any causative role claimed for cigarette smoking.

B. Onset of the rising incidence: It has been implied by the proponents of a causal relation between carcinoma of the lung and inhala-

tion of cigarette smoke habitually, that the spiraling incidence followed the increased popularity of the cigarette.

The pronouncement by the Royal College of Physicians indicated that this occurred around the time of World War I, at least in England.

Interestingly enough, the meticulous German pathologists were impressed by a rising incidence of this condition in their caseload beginning before 1900. The cases increased not only in total numbers, but as a percentage of all cancers and as a percentage of all autopsies. Thus, bronchogenic carcinoma as a pathologically proved disease began its rising incidence before cigarette consumption became popular.

II. CANCER AGE

Allusion was made above to the "cancer age." This has been facetiously referred to as 3 to 83 years, but when dealing with bronchogenic carcinoma, the age of incidence is amazingly narrow in all series. This peak of age incidence is 50 to 65 years. The curve downward on either side of this peak is surprisingly steep. Certainly this is true below 45 and above 70 years of age, respectively. Our tables, based on an analysis of 2,570 veterans at Hines, present the same curve.

The only age incidence study that differs from this is that of Schneeberg miners, who developed the disease 10 or 15 years sooner, apparently as a result of their particular exposure. No comparable reduction of age of onset exists even as to the heaviest cigarette smokers.

It is of particular note that the same age incidence persists regardless of whether, how long or how much the subject smokes. Thus, while it may be that there is a statistical association between smoking and the frequency of lung cancer, smokers do not seem to get it any earlier than nonsmokers regardless of the duration or amount of smoking. Certainly this fact justifies doubt of the hypothesis that smoking it a causal factor in lung cancer.

It appears, therefore, that there is little or no evidence of a dosage factor since the heavy smoker does not develop its cancer any earlier. This has been very eloquently elaborated upon by Professor Passey who found that the age of onset of the cancer was not influenced by either the amount of smoking in terms of cigarettes per day nor the age at which the individual began smoking.

III. THE LOCATION OF THE CANCER

Another very impressive clinical fact that is inconsistent with any inhalant being a causal factor in this disease, has to do with the distribution of the cancers.

The trachea (and I refer to that portion from the voice box to the main bifurcation), as well as the principal bronchi of cigarette smokers, are alleged to show various and ominous changes, which range from the loss of cilia to so-called precancerous lesions. These do occur more frequently in the bronchi than in the trachea, but in the former location seem to be evenly distributed.

It is tremendously significant to me, however, that regardless of how grave sounding these changes may seem in these studies, cancer of the trachea is a medical rarity, even though exposed to all inhaled smoke.

Further, the appearance of a cancer simultaneously in each lung, or, in those persons who have survived one lung cancer, the appearance of a second cancer later likewise is a medical rarity. I am speaking in terms of tens and not hundreds of cases in all the recorded medical literature.

AIR POLLUTION

On the basis of the different analyses, carcinogenic substances do exist in the urban atmosphere in amounts far greater than the heaviest cigarette consumption might provide. The urban incidence (statistically) of lung cancer is almost always substantially greater than that in rural areas, thus pointing to air pollution as a possible etiologic or causal factor.

I cannot, however, accept air pollution as any more of a direct etiologic agent than inhalation of cigarette smoke and for the same reasons.

It is interesting to note that in the British report by the Royal College of Physicians, carcinogens were said to be present in cigarette smoke in minute amounts only.

Admitting my inadequacy in the realm of statistical analysis I nonetheless wish briefly to point out that at least two studies suggest that the peak of incidence of cancer of the lung may be near or may have been reached. Thus, perhaps and hopefully, a declining phase in this problem may lie ahead. Already the rate of apparent increase of lung cancer has so declined that there is no longer a parallel with the still increasing consumption of cigarettes.

SUMMARY

In summary, I accept a statistical association between cigarette smoking and lung cancer, but do not consider that this proves smoking to be a cause of the disease.

The increase in diagnosed lung cancer cases is explainable by a variety of reasons but there has probably been some actual increase. The cause for this probable increase is not clear to me. This rising incidence began prior to the popularity of cigarettes, which casts doubt again on there being any causal relation between cigarette smoking and the disease.

Further, in spite of alleged changes of ominous character in the airway of habitual smokers, clinical cancers rarely occur in the trachea (windpipe) simultaneously in both lungs or a second time in the survivor of one lung cancer.

Also, regardless of smoking habits, an individual developing a lung cancer will do so in the same very narrow age range—50 to 65 years.

Finally, there is some evidence that perhaps a peak of incidence in the lung cancer problem may be here now or may possibly have passed.

All of this evidence leads me to conclude that we still don't know the cause or causes of cancer of the lung. The continuing need for honest research in seeking the answer to this unsolved problem cannot be sidestepped merely because an apparent statistical association has spotlighted a convenient, though probably innocent, suspect.

Thank you.

Mr. ROBERTS. Thank you, Dr. Langston. We appreciate your appearance before the committee. I have no questions. The gentleman from California.

Mr. YOUNGER. Thank you, Mr. Chairman. I thank you for your report, Dr. Langston. I will ask the clerk to show you a copy of the Surgeon General's Committee's report. If you will notice on the page there, the Surgeon General's Advisory Committee on Smoking and Health. How many of those doctors do you know?

Dr. LANGSTON. I know briefly, not personally, Dr. Burdette, and I know likewise Dr. LeMaistre—but not on a personal basis.

Mr. YOUNGER. Do any of these doctors that are listed there take any active part in the various organizations that you belong to?

Dr. LANGSTON. Yes, I have had some indirect contact through the National Tuberculosis Association and some of its committees with Dr. LeMaistre. Dr. Burdette is a member of surgical societies which I also am a member of.

Mr. YOUNGER. What is the field?

Dr. LANGSTON. He is the chairman of the department of surgery at the University of Utah. He has done some research into cancer in general. He is not, as far as I know, particularly interested in lung cancer per se.

Mr. YOUNGER. And LeMaistre?

Dr. LANGSTON. He is an internist, diagnostician, I believe, currently in Dallas. He is interested in chest diseases generally but again professes no specific interest in lung cancer, I believe.

Mr. YOUNGER. Those are the only two—this is a rather embarrassing question and you don't need to answer it, if you don't want to—but would you consider this panel as an outstanding panel representing the medical association in connection with lung cancer? You don't have to answer.

Dr. LANGSTON. I would like to answer that. For example, it was stated here before, I believe by Dr. Russek, how the committee was picked, and the Surgeon General in this volume states that they were picked because they had expressed no overt opinion concerning the problems at hand. This, therefore, qualified them for membership on this committee. This, of course, made the committee, I am sure, unbiased. But it also forced them into the position to simply evaluate by their various specialty approaches the material which was presented to them for evaluation, because, as has also been stated several times here before this committee, they conducted no independent research.

Mr. KORNEGAY. Would the gentleman yield?

Mr. YOUNGER. Yes.

Mr. KORNEGAY. Doctor, would it not be correct to assume that a group of statisticians would have been far more qualified to have pulled together this group of independent studies and arrived at conclusions?

Dr. LANGSTON. Did you say general practitioners?

Mr. KORNEGAY. No, statisticians, inasmuch as the bulk of the report is based on statistical material.

Dr. LANGSTON. Yes, although I don't think that would be the logical composition of such a committee when we are dealing with diseases.

Mr. KORNEGAY. I agree with you. I don't think it should be. I was just wondering what your opinion would be.

Dr. LANGSTON. My answer to that, sir, is very simple. I think the only accusing finger in the way of guilt that cigarette smoking is responsible for cancer of the lung is based entirely on the statistics. It is a statistician's playground.

Mr. KORNEGAY. Well, that is the point I was trying to make.

Dr. LANGSTON. As long as we are talking about the composition and character of the committee—I would like to state that the clinical data which I presented here, I believe, is represented by one sentence only in the Surgeon General's report; namely, that cancer of the windpipe is a medical rarity. They discussed the dosage factor in smoking. The more you smoke the more cancer of the lung. But they have carefully omitted any reference to the fact that you don't get it any earlier. There is no dosage factor as far as I can see.

Mr. KORNEGAY (presiding). The gentleman from Texas, Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

I am a bit concerned that you, Dr. Langston, and two or three physicians who preceded you, have given testimony that you simply don't believe there is any proof that smoking causes cancer. This is in conflict, as Mr. Younger said, with what appeared in the Surgeon General's report. This means that you medical people are split apart on this thing. You even go so far here at the end to say that there is a continuing need for honest research, and you emphasized that word, indicating that what has gone on before in this report was not honest. Do you mean that?

Dr. LANGSTON. No, I do not mean that what appears here in the report is dishonest, but I am very concerned about the fact that we had better be really sure that cigarette smoking is the cause of cancer or we are going to lose an opportunity to continue to work on the problem of what does cause it. This is the only thing I am concerned about. I do not know the cause of cancer of the lung. I do not believe that cigarette smoking is the cause. I therefore am interested not in "hanging" cigarette smoke but in pursuing the effort to find out what, if we can, does produce it.

This is my point.

Mr. PICKLE. I questioned the use of your word "honest." I think it is ill advised.

Dr. LANGSTON. May I give you an example of some research which is reported as such?

Mr. PICKLE. Certainly.

Dr. LANGSTON. There is an institution which I don't think we need to name which is actually in the process of the manufacture of cigarettes as part of the research program. I cannot see particularly how this is going to alter anything. They are not making cigarettes out of tobacco. They have been pictured in paramedical journals in their drying sheds selecting the leaves which are to go into their particular brand of cigarettes. This cigarette is made out of cabbage or beet or dandelion leaves. Research does not have to have an immediate foreseeable result. It should be dispassionate, I admit. But it seems to me that the basic problem is not attacked by changing the brand of the leaf. This consumes money which is earmarked for research, for example.

Mr. PICKLE. Are you saying that the Surgeon General's report, when you say it is "statistical," that in your opinion it is not based on medical studies?

Dr. LANGSTON. The correlations are all based on surveys of population and how much they smoked or how much they didn't smoke and how many died of cancer of the lung and so on. The actual clinical problem such as I have tried to review here and the reasons why I question it, were not brought out in the Surgeon General's report.

Mr. PICKLE. You must feel this very strongly because you go ahead to conclude and I will quote you, "This unsolved problem cannot be sidestepped merely because of an apparent statistical association has spotlighted a convenient though probably innocent subject."

It seems to me you are saying that there is not only no connection but that cigarette smoking is innocent. You are not just stating; you are defending it.

Dr. LANGSTON. No, sir.

Mr. PICKLE. Who do you represent?

Dr. LANGSTON. I don't represent anybody. These are just my opinions.

Mr. PICKLE. You are with the tuberculosis clinic in Chicago?

Dr. LANGSTON. That is right.

Mr. PICKLE. Are you working in any way with the tobacco people?

Dr. LANGSTON. No, sir.

Mr. PICKLE. Have you ever made any kind of survey for the tobacco people?

Dr. LANGSTON. No, sir.

Mr. PICKLE. For any other group or organization?

Dr. LANGSTON. On tobacco?

Mr. PICKLE. Yes.

Dr. LANGSTON. No.

Mr. PICKLE. Where do you get your information?

Dr. LANGSTON. You mean the information I gave here?

Mr. PICKLE. Yes.

Dr. LANGSTON. I have been a practicing thoracic surgeon since 1940. I have been treating these people. I am a consultant to the Veterans' Administration at Hines, Ill. I told you we had 2,570 cases on which we had statistical data. I am basing it on these factors.

Mr. PICKLE. I would be interested to know at whose invitation you come to the committee.

Dr. LANGSTON. I come here at the invitation of Mr. Hardy, representing the tobacco companies. This is my own statement.

Mr. PICKLE. I am sure of that. I am sure it is an honest statement. I just get a little concerned here that your testimony gives the impression that you almost pooh-pooh the idea that there's any association between smoking and cancer. This I find hard to believe in view of the other statements. I think probably the truth is something somewhere in between, because I think a lot of questions are yet to be found in this field. I sure believe that. I don't think it is to be made light of, as you say, "we just ought to be sure." Certainly we ought to be sure of it. I don't want to see any kind of rule adopted that would be too harsh.

Nor for the Congress to pass anything that was too harsh. Neither is it likely that we can discount a lot of these studies. You apparently do discount this Surgeon General's report and say it is purely statistical just because somebody from a statistician's standpoint put it together and not because it is based on any medical study.

Dr. LANGSTON. May I go back and give you a little background? This may clarify my stand on why I make these statements. For example, there is no question but what the original intent of the study of population groups with respect to their smoking habits was definitely suggested by the apparent rising incidence of cancer of the lung and the rising consumption of cigarettes. I think that would be a very logical conclusion. I think it is a perfect point of departure. However, this has gone on now to a point where cigarette smoking is not only implicated in cancer of the lung, it is implicated in cancer of the bladder. It is implicated in other types of cancer, even far remote from the respiratory tract. There are a large number of people who accept this as a cause-and-effect relationship. My reason for being willing to testify and my reason for being here is simply this. As long as I cannot accept cigarette smoking as a cause of cancer of the lung for the reasons mentioned, I feel that the problem has not been settled and I cannot quietly sit by and see the guilt placed on cigarettes when I can't accept them as the causative factor.

Mr. PICKLE. You feel this so strongly that you want to fly to Washington and testify on this subject?

Dr. LANGSTON. I was willing.

Mr. PICKLE. Let me ask you just one other question which might enlighten me. You say that you believe that the peak of lung cancer incidence may have been reached. Why do you say that?

Dr. LANGSTON. I said there are two studies which suggested this. You see this sheds additional light on my arguments, because there is some question as to how factual this increase in lung cancer may have been. In other words, it may be explainable on another basis, better certification, better understanding over a period of years. But I believe there has been an increase. If it is true, on the basis of these two studies through the Public Health Service which suggest that the increment of incidence is tapering off while at the same time the consumption of cigarettes seems to be climbing the two curves are now disparate.

Mr. PICKLE. You give me a statistical report which you condemned in the other instance.

Dr. LANGSTON. That is right. I apologized for saying that in the body of my report. Since I am not a statistician I am not defending this. I simply say there are two studies which suggest this. Again I am accepting these statisticians just like I accept the association between cancer of the lung and cigarette smoking that statisticians put out.

Mr. PICKLE. I have no further questions.

Mr. KORNEGAY. Mr. Watson?

Mr. WATSON. Mr. Chairman, I don't have a question. I would like to make one comment. You raise a very interesting point that perhaps the determination by the Surgeon General that the cigarette is a causal factor as related to lung cancer might deter the further honest scientific medical study of this particular problem. I had not thought of that but I think it might very well be a real possibility. I however, hope that such will not result, but rather that the industry and the Government will continue to explore this matter until we can arrive at some definitive scientific proof as to the causal relationship.

Dr. LANGSTON. Thank you, sir. This is my hope.

Mr. KORNEGAY. Thank you very much, Dr. Langston. We appreciate greatly your coming here and giving us the benefit of your vast knowledge in this area.

Dr. LANGSTON. Thank you, sir.

Mr. KORNEGAY. That is a very fine statement.

Our next witness will be Dr. Milton B. Rosenblatt. Will you come around, please, sir? You may proceed with your statement.

STATEMENT OF DR. MILTON B. ROSENBLATT, CHEST PHYSICIAN, CHIEF, MEDICAL CLINICS, METROPOLITAN HOSPITAL, NEW YORK, N.Y.

Dr. ROSENBLATT. Thank you, Mr. Chairman, for the opportunity of presenting my views before this committee. I am Dr. Milton Rosenblatt and have been actively engaged in the research practice and teaching of pulmonary diseases for more than 30 years. I am a member of the American College of Chest Physicians. I was graduated from the College of the City of New York in 1927 and from the Long Island College of Medicine in 1931. I completed my internship and residency in pulmonary diseases at the Montefiore Hospital, New York City, in 1933, and was awarded a fellowship in pulmonary diseases in 1934. Between the years 1934 and 1951 I was a member of the attending staff of the Pulmonary Division of the Montefiore Hospital, serving successively as assistant, associate, and attending physician.

In 1936 I became affiliated with the City Hospital, Welfare Island, New York City, and served as chief of the chest clinic and visiting physician until 1956. Since 1956 I have been on the staff of the Metropolitan Hospital with the rank of chief of the medical clinics and visiting physician. I have been affiliated with the New York Medical College for 20 years and hold the rank of associate clinical professor of medicine.

I am the coauthor of the book, "Cancer of the Lung," published by the Oxford University Press in 1956 and have written more than 30 articles on lung cancer and other pulmonary diseases. A complete listing of my hospital appointments and publications is herewith attached.

(The documents referred to follow:)

CURRICULUM VITAE OF MILTON B. ROSENBLATT, M.D.

1. 1927: Graduated from the College of the City of New York (B.S.).
2. 1931: Graduated from the Long Island College of Medicine (M.D.).
3. 1931–33: Internship and residency in pulmonary diseases, Montefiore Hospital.
4. 1934–35: Fellowship in pulmonary diseases, Montefiore Hospital.
5. 1934–51: Assistant, associate, and attending physician, respectively, Pulmonary Division, Montefiore Hospital.
6. 1935–37: Assistant in medicine and instructor, New York Post-Graduate Medical School, Columbia University.
7. 1936–56: Chief, chest clinic, New York City Hospital; associate visiting and visiting physician, respectively, New York City Hospital.
8. 1938–40: Associate visiting physician, municipal sanatorium.
9. 1944 to date: Associate clinical professor of medicine, New York Medical College.

10. 1956 to date: Chief, medical clinics, Metropolitan Hospital; visiting physician, Metropolitan Hospital and Bird S. Coler Hospital.
11. 1956 to date: Associate attending physician, Flower-Fifth Avenue Hospital.
12. 1956 to date: Attending physician, Doctors Hospital.
13. Fellow, American College of Chest Physicians; Member of Council on Undergraduate Medical Education.
14. Fellow, American College of Cardiology.
15. Fellow, New York Academy of Medicine.
16. American Thoracic Society.
17. Association of American Medical Colleges.
18. New York County and State medical societies.
19. American Medical Association.

PUBLICATIONS

Books

1. "*Cancer of the Lung*" (with J. Lisa), Oxford University Press, Jan. 1956.
2. "*Bronchiectasis*" (with J. Lisa), Oxford University Press, Feb. 1943.

Articles

1. "Pulmonary Manifestations of Carcinoma of the Pancreas" (with J. Lisa and S. Trinidad), *Cancer* 17: 395 (March) 1964.
2. "Bronchogenic Carcinoma Simulated by Metastatic Tumors" (with S. Trinidad and J. Lisa), *Cancer* 16: 1521 (Dec.) 1963.
3. "Bronchogenic Carcinoma: Relation to Antecedent Pulmonary Infection," *Dis. of Chest* 44: 598, 1963.
4. "Specific Epithelial Degeneration (Ciliocytophthoria) in Inflammatory and Malignant Respiratory Disease," *Dis. of Chest* 43: 605 (June) 1963.
5. "The Association of Bronchogenic Carcinoma and Pulmonary Tuberculosis," to be published in *Geriatrics*.
6. "The Significance of the Solitary Pulmonary Metastasis," to be published in *Medical Science*.
7. "Lung Cancer in the 19th Century," to be published in the *Bulletin of the History of Medicine*.
8. "Bronchogenic Carcinoma Simulated By Secondary Tumors" (with S. Trinidad and J. Lisa) in Progress in Clinical Cancer to be published by Grune & Stratton, New York City.
9. "Coexistence of Lung Cancer and Pulmonary Tuberculosis," Clinical Medicine 69: 1303, (June) 1962.
10. "Quantophrenia, Lung Cancer and Common Sense," J.A.M.A. 180: 87, (April 7) 1962.
11. "Bronchiectasis," Medical Science 7: 744, (June 10) 1960.
12. "The Modern Diagnosis and Treatment of Pulmonary Tuberculosis," Medical Science 6: 316, (Sept. 10) 1959.
13. "Bronchogenic Carcinoma: Etiologic Considerations," Clinical Medicine, Volume 7, (June) 1959.
14. "Iproniazid (Marsilid) Hepatitis," N.Y.S. Med J. 58: 3680, (Nov. 15) 1958.
15. "Cancer of the Lung: Facts and Fallacies," Kentucky State Med. J. (Feb.) 1958.
16. "Metastatic Pulmonary Melanoma of 15 Months' Duration," Dis. of Chest 34: 342, (Sept.) 1958.
17. "Why Doctors Disagree," Essential Books (Oxford University Press) 1: 11, (April) 1956.
18. "The Middle Lobe Syndrome" (with I. Kross), Jour. of the Mount Sinai Hospital 17: 711, (March–April) 1951.
19. "Clinical Considerations and Treatment of Amyloidosis," U.S. Armed Forces Med. J. 2: 739, 1951.
20. "Lobectomy in a Patient 83 Years of Age" (with A. Aufses and J. Lisa), J.A.M.A. 143: 552, (June) 1950.
21. "Early Diagnosis of Carcinoma of the Lung," N.Y. Medicine 5: 16, (Nov. 5) 1949.
22. "Studies of Mycobacteria With the Electron Microscope" (with A. Gessler and E. Fuller), Am. Rev. Tuberc. 46: 587, (Dec.) 1942.
23. "Cholesterol Content of Sputum" (with M. Bruger), Am. Rev. Tuberc. 47: 530, (May) 1943.

24. "Putrid Lung Abscess," J. Thoracic Surgery 9: 294, (Feb.) 1940.
25. "Upper Lobe Pneumonia in the Adult" (with A. Bachman), Ann. of Int. Med. 11: 1845, (April) 1938.
26. "Paroxysmal Auricular Fibrillation in the Course of Right Heart Failure," Am. Heart J. 15: 114, (Jan.) 1938.
27. "Massive Pleural Effusions in Artificial Pneumothorax," Am. Rev. Tuberc. 36: 467, (Oct.) 1937.
28. "Cardiac Failure Secondary to Chronic Pulmonary Tuberculosis" (with G. Nemet), Am. Rev. Tuberc. 35: 713, (June) 1937.
29. "Clinical Manifestations of Amyloidosis," Ann. of Int. Med. 8: 678, (Dec.) 1934.
30. "Recovery From Generalized Amyloidosis Secondary to Pulmonary Tuberculosis," Arch. Int. Med. 57: 562, (March) 1936.
31. "Vitamin Therapy in Intestinal Tuberculosis" (with M. Steinbach), Am. Rev. Tuberc. (Jan.) 1935.
32. "Trytophan Test in Tuberculous Meningitis," Am. Rev. Tuberc. 29: 668, (June) 1934.
33. "Amyloidosis and Amyloid Nephrosis," Am. J. Med. Sci. 8: 678, (Oct.) 1933.
34. "What Interns Expect of the Hospital," Modern Hospital (Aug.) 1934.
35. "The Immortal French Physician: René Théophile Laënnec," Med. Times and Long Island Med. J. (Aug.) 1931.

Dr. ROSENBLATT. Mr. Chairman, the report of the Advisory Committee concluded that a causal relationship existed between smoking and lung cancer on the basis of statistical correlations supported by hypothetical considerations. In arriving at this judgment the report disregarded considerable pertinent data. The following is an abridged version of the refutatory evidence submitted in the paper, "Smoking and Disease: Etiological Perspective." The allegations herein presented are fully documented in the complete manuscript.

I. Cancer of the lung was a prevalent disease for many decades before the era of widespread cigarette smoking. It was well recognized in England, France, and Germany throughout the 19th century, and the concept that lung cancer is a modern disease produced by exposure to cigarettes is fallacious. Hundreds of articles, dissertations, and theses on lung cancer were published when cigarette smoking was virtually nonexistent. One single issue of a British medical journal in 1843 contained reviews of five articles on lung cancer with an editorial comment that the disease was far more frequent than suspected. It is not generally realized that the fundamental knowledge of the symptoms, signs, and clinical features of this disease were well established for almost 100 years before the era of cigarette smoking.

At the beginning of this century physicians, both here and abroad, were writing comprehensive articles on the prevalence of lung cancer urging greater familiarity with its manifestations and the techniques with which to diagnose it.

II. Statistics showing a tremendous increase in lung cancer during the past 30 years are misleading. The increase is only apparent and is the result of greater skill in the detection of the disease. All the techniques currently used to diagnose lung cancer were either discovered or perfected during the past three decades. The widely used Papanicolaou stain for recognition of cancer cells in the sputum was unheard of 20 years ago. Surgical exploration of the chest which has facilitated diagnosis in hundreds of cases has been a routine procedure for less than 25 years.

Although bronchoscopy had been available for some time it was little used prior to 1930 because of unwarranted anxiety as to possible hazards. The greatest contribution to lung cancer diagnosis is the

vast increase in X-ray examinations which are now routine in doctors' offices, hospitals, clinics, industry, and military organizations.

The widespread use of the the X-ray has resulted in the detection of lung cancers in patients with no pulmonary symptoms whatsoever. It is unrealistic to compare lung cancer statistics during recent years with those of a previous era in which the techniques for diagnosis were scarcely available.

Prior to the development of present diagnostic methods many lung cancers had been erroneously diagnosed as tuberculosis, pneumonia, pleurisy, abscess, or even brain tumor. It must be emphasized that during the years when national mortality statistics showed a very low incidence of lung cancer there were physicians who challenged their accuracy. More than 50 years ago, the first American textbook on lung cancer ridiculed the low census figures. In 1930 when the official number of lung cancer deaths was reported as less than 3,000 for the entire United States, one doctor in Philadelphia, specializing in bronchoscopic diagnosis, had records of almost 500 cases.

III. The impression has been created that lung cancer is increasing in an epidemic manner but this is far from correct. The greatest percentage rise in lung cancer deaths occurred during the period when the disease was just beginning to be generally recognized.

Between 1914 and 1920 the number of certified lung cancer deaths increased more than 150 percent. Records of the Metropolitan Life Insurance Co. showed an increase of 100 percent among its policyholders between 1917 and 1926.

During the succeeding years there has been a progressive decline in the rate of increase. Analysis of the lung cancer deaths in the United States during the past three decades shows that between 1930 and 1935, the increase was 79 percent; between 1940 and 1945, the increase was 53 percent; and between 1955 and 1960, the increase was only 39 percent.

A comparable review of the lung cancer mortality statistics of New York State shows a similar decline in the rate of increase. No figures are available prior to 1931 but the greatest increase had occurred between 1931 and 1935. Since then the rate has progressively declined. Between 1955 and 1960 there was only an 18-percent increase in lung cancer mortality.

The progressive decline in the increase of lung cancer in the United States occurred during the same period that cigarette consumption multiplied 200 times. If cigarette smoking produced lung cancer, directly or indirectly, the tremendous rise in cigarette consumption would have resulted in a sustained or greater rate of increase. The fact that the opposite has occurred indicates that there has been a relatively fixed prevalence of lung cancer in the population. The studies of an eminent statistician of the National Cancer Institute showed that the trend of the increase was not in the direction of an epidemic but toward stabilization similar to other cancers in which diagnostic procedures have been standardized for long periods of time.

IV. One of the biological characteristics of lung cancer is the predilection of the disease for men.

This observation has been established for more than 100 years and it is indeed strange that it should have escaped recognition in the report of the Advisory Committee. According to the report the high prevalence of lung cancer among males is the result of cigarette smoking

but according to medical history every study on lung cancer before the era of cigarette smoking showed male predominance of the disease. In some studies, the sex ratio favoring the male was found higher in the 19th century than it is at the present time. The affinity of lung cancer for males also exists in areas where cigarette smoking is a rarity.

V. Despite the prodigious increase in cigarette smoking by women during the past four decades there has been no encroachment on male predominance. If cigarettes contained a cancer producing substance the effect should be apparent by this time and there should be a comparable rise in female lung cancer deaths and a reduction in the sex ratio. There has been no indication of such a trend, whatsoever. Since 1950 the lung cancer death rate for women has increased very little and between the years 1959 and 1962 the increase has remained virtually stationary averaging less than 85 cases per year.

It is scientifically incongruous to attribute the cause of lung cancer to cigarettes when more than 15 million regular women smokers show no apparent effect of exposure to the alleged carcinogenic agent.

VI. Cancer of the lung is an age specific disease occurring predominantly in the fifth, sixth, and seventh decades of life. The disease is uncommon below the age of 40 and rare during the first three decades. All statistical studies in the 19th century and in the era of widespread cigarette consumption confirms this fundamental biological fact. Collected data from the World Health Organization shows a similar age curve of distribution throughout many countries with the greatest number of cases between 55 and 64 years of age.

It has been alleged that cigarette smoking produces a cumulative carcinogenic effect over a period of approximately two decades. If this is true the segment of the population which began smoking in the early teen ages should develop lung cancer before 40 years of age. No indication of this has occurred. The age at which lung cancer patients started to smoke has no relation to the age in which the disease was acquired. Whether the age of onset of smoking was under 10 years or over 40 years, all developed lung cancer in the same later period of life; namely, the fifth, sixth, and seventh decades.

It has also been noted and observed that the number of cigarettes consumed daily did not influence the age of onset; both the light and heavy smoker have been affected at the same age period. Neither the amount consumed daily nor the duration of smoking have been reflected in corresponding variations in the age of onset of lung cancer.

VII. Proponents of the smoking-lung cancer theory have questioned the degree of prevalence of lung cancer before cigarette smoking because of the absence of large scale statistical studies in the 19th century. This is in effect denying the existence of the era of prehistoric man because of the paucity of fossil relics or artifacts. Biometric observations and accurately kept hospital records are relatively recent innovations. There is, however, one index which lends itself to comparisons between the incidence of lung cancer in the 19th century and the present era, and that is the proportion of lung cancers in relation to the total number of cancers. During recent years lung cancers have comprised approximately 10–15 percent of all cancers and in certain hospitals with a long history of experience in this disease almost the same relationship existed in the precigarette-smoking era.

Reports from Leeds, London, and Dresden in the 19th century showed the ratio of lung cancer to all cancers to be in the range of 8–13 percent. The finding of similar percentages in Leipzig, Vienna, and Zwichau in the early years of the 20th century again casts doubt on the validity of a true increase in lung cancer in recent years inasmuch as these figures are all comparable to current relationships.

VIII. In an attempt to substantiate the statistical correlations, the report of the Advisory Committee has accepted the results of certain pathological studies purporting to show the deleterious effect of smoking on the lining of the bronchial tubes. The pathological changes described in these studies have been observed in all types of pulmonary disease for many decades before the era of cigarette smoking. The bronchial changes attributed to smoking are nonspecific and their relation to lung cancer is highly speculative. There are certain pathological changes in the peripheral parts of the lung that have been associated with lung cancer but these were not found in the studies mentioned in the report. The frequent occurrence of localized areas of cancer in the bronchi of smokers in the studies cited is nullified by the results of 11 other studies which showed that localized bronchial cancer is a rarity except in patients who actually have cancer of the lung.

IX. A major obstacle in establishing a causal relationship between smoking and lung cancer has been the inability to produce the disease in the experimental animal. For approximately 30 years a variety of experiments in which mice were exposed to tobacco smoke has thus far failed to produce the disease in the experimental animal. For approximately 30 years a variety of experiments in which mice were exposed to tobacco smoke has thus far failed to produce one instance of lung cancer.

Attempts to produce the disease by direct application of tobacco extracts or smoke condensates have also resulted in dismal failure. The report rationalized the failure of the experiments by hypothetical explanations referring to certain chemicals in tobacco which are also found in substance capable of inducing skin cancer. The carcinogenic effect of these chemicals is not substantiated by the absence of skin cancer in the hundreds of millions of tobacco stained fingers. Neither is the carcinogenic effect of tobacco substantiated by the low prevalence rate of lung cancer in smokers. The most recent statistical survey showed that risk among smokers was 11 times that of the nonsmokers but the prevalence rate was only 0.3 percent, or 1 lung cancer in every 333 smokers.

X. Medical articles have been written on bronchitis for almost 200 years but the report of the Advisory Committee decided that the most important cause of bronchitis was smoking. The conclusion was based on statistical correlations between smoking and recurrent cough.

The fallacy of these correlations lies in the fact that cough is a symptom of many pulmonary and nonpulmonary conditions and that the studies cited did not exclude other diseases by appropriate diagnostic examinations. In most of the studies the diagnosis of bronchitis was established solely on the personal recollection of the patient as to whether he had coughed daily for 3 months for 3 successive years. This seems a very questionable manner in which to establish a scientific relationship and the inconsistencies in the reports confirmed this.

The Advisory Committee also concluded that cigarette smoking was associated with an increased risk of dying from emphysema. This correlation is also tenuous because emphysema occurs in a variety of diseases ranging from bilateral pulmonary tuberculosis to bacterial infection of the smaller bronchial tubes.

Emphysema may be found at autopsy in patients who presented no pulmonary symptoms during life and, conversely, may be entirely absent in patients presenting all the typical symptoms, physical signs, and X-ray features. There is no specific clinical test with which to establish the diagnosis. The studies which provided the evidence for the relationship between smoking and emphysema were based on variable complaints, not on pathological findings.

The Advisory Committee's conclusion was therefore a judgment on the correlation between smoking and certain nonspecific symptoms in patients in whom the existence of emphysema was purely speculative.

Mr. Chairman, I thank you for your patience.

Mr. KORNEGAY (presiding). Thank you very much, Dr. Rosenblatt, for a very fine statement.

Mr. Younger?

Mr. YOUNGER. Dr. Rosenblatt, how many of the doctors on the Surgeon General's Committee do you recognize?

Dr. ROSENBLATT. I know one personally. Dr. Baine-Jones.

Mr. YOUNGER. There is only one on that list that you know?

Mr. ROSENBLATT. That I know personally. He was kind enough to visit me in New York during the study and to discuss certain things with me. The Surgeon General's Committee did communicate with me. I did give them certain information. They didn't use it. As a matter of fact, they asked me to do some special studies for them, which I did. My particular sphere of interest is something which very few doctors are or have been interested in and that is the historical aspects. Lung cancer to the American physician, and this may come as a surprise to you, was as little known to the average doctor a few decades ago as it is to any layman. No one knew about it and nobody cared about it.

It was only when Dr. Graham took out the first lung and produced a living patient. I was a resident at the time. Then were—we became interested. Who cared about cancer because it was just a fatal disease. For the first time we had a therapeutic approach.

One thing followed another, we knew we could diagnose it by the X-rays. We were looking for the early case. We could not find it. We still don't know what it is because it is not the smallest anatomical unit. Many of these smaller units which we thought were early cases we now find were metastatic diseases. I must say categorically the reason why many of us feel so heartsick about the statistical studies is not that we object to statistics. We don't know what they are based on because they are not based on autopsies. We have just recently shown that in the absence of autopsy a secondary cancer from any part of the body can look like lung cancer even with microscopy. We don't know what the basis of the statistical studies is.

That is the reason we question the statistics—not that we object to statistics.

Mr. YOUNGER. Thank you.

Mr. KORNEGAY. Mr. Pickle.

Mr. PICKLE. I would like to observe again, Doctor, that there seem to be some very opposite views among the medical profession on this matter.

The Surgeon General's report shows one thing and they are just as firm in it as you and some other doctors that there is no connection. You are all very positive about it. There is no question about it.

If you will pardon me, I don't mean this personally to you, you all remind me of the fellow we used to refer to in Texas as a justice of the peace who was a great authority on the law. He was described loosely in this manner. "He was often wrong but never in doubt."

I don't know who is wrong or who is right but there sure is a very definite devision of thought here. Perhaps the best thing that we have gotten is that we have your testimony and this will certainly bear looking into. I am glad to have it in the record and I appreciate what you said and glad that you appeared before the committee.

Dr. ROSENBLATT. May I say, sir, that we are not positive? We are the ones who are in doubt. I have been at this over 30 years. I don't know the cause of cancer of the lung. I know a lot more about it than a great many alleged authorities on the subject. But I don't know anything about cancer of the lung as far as etiology is concerned. I am the one in doubt.

Mr. PICKLE. I get the feeling in your testimony that you are not in doubt. You just say they have not proved it yet.

Dr. ROSENBLATT. That is right.

Mr. PICKLE. Therefore you say there is no connection?

Dr. ROSENBLATT. I do not say that smoking is either this or that. All I say is that they, and that includes a great many individuals, have come up with a certain thesis. They have not proved it to my satisfaction and there are a great many loopholes in the evidence as they put it together. That is all. As far as confusion in medicine, that is the mystery of medicine.

That is how we make progress.

Mr. PICKLE. That is all, Mr. Chairman.

Mr. KORNEGAY. Thank you. Dr. Rosenblatt, let me ask you one question. I certainly gather from your statement there and from your interest in the subject matter that you have read and studied the Surgeon General's report?

Dr. ROSENBLATT. I have, sir.

Mr. KORNEGAY. In your opinion is there sufficient evidence in this report to justify or warrant the labeling of cigarettes as being dangerous to health and may cause death from cancer or other diseases?

Dr. ROSENBLATT. No, sir.

Mr. KORNEGAY. Thank you very much. We appreciate your coming and giving the committee the benefit of your great knowledge in this matter.

Dr. ROSENBLATT. Thank you very much.

(The following material was submitted for the record by Dr. Rosenblatt:)

Smoking and Disease: Etiological Perspective

(By Milton B. Rosenblatt, M.D., associate clinical professor of medicine, New York Medical College)

INTRODUCTION

The increase in lung cancer in the past few decades has fostered the concept that this is a modern disease produced by exposure to recently introduced carcinogenic substances. In the intensified search for causal agents many fundamental facts have been disregarded. The proper differentiation between apparent and absolute increase requires a perspective that encompasses far more than a mere assessment of epidemiological statistics. The rapid rise of a disease coincident with improvement in diagnostic techniques has occurred many times in the course of medical history. At the turn of the century, when the marked increase in cancer deaths in England was attributed variously to parasitic infestation, meat consumption and excessive rainfall, King and Newsholme (1) observed prophetically in 1893 that whenever a cancer became diagnostically accessible the incidence automatically increased. The report of the advisory committee has based its judgments of causality almost entirely on epidemiological data, has invoked hypotheical considerations to substantiate the statistical correlations, and has not sufficiently considered pertinent refutatory evidence.

HISTORICAL CONSIDERATION

The report of the advisory committee discusses the history of lung cancer only insofar as it relates to the studies on smoking and completely ignores the fact that the disease had been prevalent for a hundred years before cigarette smoking became widespread. Nowhere in the report is it even intimated that the basic knowledge of the pathology of lung cancer was developed in the 19th century, that all the characteristic symptoms and physical signs were discovered in the 19th century, and that astute clinicians, both here and abroad, were emphasizing, in the 19th century, that lung cancer occurred far more frequently than was generally realized.

In 1815, Laënnec (2) differentiated lung cancer from tuberculosis and other pulmonary diseases in an article in the Dictionnaire des sciences médicales. Four years later he published a treatise on physical diagnosis, "De l'auscultation médiate," which was translated by Forbes (3) and evoked considerable interest in the disease in England. Andral (4), in 1821, investigated the possibility of diagnosis by sputum examination and in 1837, edited the fourth edition of Laënnec's classic work contributing a profusion of footnotes on lung cancer. Bouillard (5), in 1826, discussed the possible relationship between antecedent pulmonary infection and lung cancer. Heyfelder (6) won a citation for his studies on the subject in 1837 and, in 1839, Bayle's Traité des Maladies Cancéreuses listed "cancer du poumon" as an established primary malignancy. Other French articles were published by Bérard (7) in 1821, Arnal (8) in 1844, Lebert (9) in 1845, Charcelay (10) in 1837, and Monneret and Fleury (11) in 1846, the latter authors contributing a sizable bibliography.

Lung cancer has been a subject of considerable interest in Britain since the publication of Stokes' textbook, "Diseases of the Chest," in 1837. The descriptions of the manifestations of the disease and the problems of differential diagnosis were indicative of a wide clinical experience. Stimulated by Stokes teachings many other British physicians made important contributions. A report by Hare (12) in 1838 described a neurological complication which was rediscovered (13) a hundred years later in this country. Significant observations in pathology and clinical medicine were made during this era by Hughes (14), MacLachlan (15), Burrows (16), and Graves (17). In April 1843, the British and Foreign Medical Review reviewed five articles on lung cancer with an editorial comment on the increasing interest in the disease and its greater prevalence than previously suspected. In the second half of the 19th century, English reports showed an increasing interest in the microscopic studies of lung cancer in order to better differentiate it from metastatic tumors of the lung. Histological findings established in 1857 by Quain (18), Cockle (19), Mayne (20),

Pitman (21), Budd (22), Page (23), and others are just as valid today as they were a century ago.

The greatest advances in the pathology of lung cancer were made in Germany in the latter decades of the 19th century. Waldeyer's (24) studies of the origin of cancers stimulated investigative research culminating in the establishment of the origin of lung cancer from bronchial epithelium. The number of case reports, articles, and inaugural dissertations on "lungenkrebs" contributed by German physicians in the 19th century is remarkable. The authors whose works provided the groundwork for our current pathological concepts include Perls (25), Georgi (26), Reinhardt (27), Birch-Hirschfeld (28), Hesse and Hartung (29), Siegel (30), Siegert (31), Wolf (32), Passler (33), Frankel (34), Schwalbe (35), Hartmann (36), and a great many others. The various cell types and architectural structures found in lung cancer were well described in these publications. The German pathologists noted that lung cancer cases usually came to autopsy in a far advanced stage of the disease but that few had been diagnosed during life. One of the most valuable contributions was the differentiation of primary lung cancer from secondary pulmonary growth and benign tumors. It is noteworthy that the pathological techniques and stains discovered by the German pathologists in the 19th century are still very much in use at present.

General interest in lung cancer developed considerably later in the United States than it did in Europe but cases were described (37) at the Massachusetts General Hospital in 1842 and 1850. Articles contributed by Lehlbach (38) in 1870 and by Loomis (39) in 1876 showed considerable familiarity with the disease. Delafield (40), the pathologist at Roosevelt Hospital, was well acquainted with primary lung cancer as early as 1868 as evidenced by his autopsy records. In the latter decades of the 19th century the number of American articles increased including contributions by Pepper (41), Van Giesen (42), Ripley (43), Kemper (44), Janeway (45), Holland (46), Hodenpyl (47), and LeCount (48). On December 18, 1880, the Medical Record commented editorially that lung cancer would continue to interest pathologists despite the lack of specific treatment. The most important American article on lung cancer in the 19th century appeared in the New York Medical Journal on February 8, 1896. The author was Adler (49) whose monograph on the subject in 1912 has since become a medical classic. In the 1896 article, Adler repeatedly emphasized that lung cancer was not a rare disease in the United States but was rarely diagnosed. He urged physicians to become more familiar with its clinical manifestations and pathologists to do more meticulous work so as to better recognize the disease at autopsy.

As the 19th century came to a close, articles, on lung cancer also appeared in medical journals in Italy, Poland, and Norway, and advances were being made in clinical diagnosis. It is not generally realized that the X–ray (50) and the bronchoscope (51) were beginning to be used to detect lung cancer before the 20th century. One of the most informative contributions of the period was the collection of statistical data on the necropsy incidence of lung cancer. Feilchenfeld (52), in a dissertation from Leipzig in 1901, described the rise in lung cancer autopsies at the Urban Hospital in Berlin and attributed it to the larger number of autopsies and the increased interest in the subject. Rieck (53) in 1904, noted the rise in lung cancers at the Pathological Institutes of Munich for the period 1854 to 1902. Similar observations were made by Feldner (54) in 1908 at Göttingen. Kikuth (55) reported a ninefold increase in lung cancer autopsies at the Eppendorfer Krankenhauses between the periods 1889 to 1899 and 1900 to 1911. Karrenstein (56), in a review from the University of Berlin in 1908, made the significant observation that no proper evaluation of lung cancer incidence could be made on the basis of official vital statistics. He also noted that refinements in histological study made it possible for the pathologist to recognize cases formerly obscured by late complications. It is very evident from the many published reports that the rise in autopsy incidence in Germany was due to greater awareness of the disease and better pathological diagnosis.

LUNG CANCER MORTALITY

Proponents of the causal relationship between smoking and lung cancer have pointed to the rise in lung cancer deaths during the past three decades as corrobative evidence since this period was also characterized by a rise in cigarette consumption. On the basis of national mortality figures it would appear that a tremendous increase in lung cancer had occurred in the United States since

1930. There is, however, much evidence available to challenge the accuracy of the mortality statistics. It is not generally realized that even if it had been possible to diagnose lung cancer in the early decades of this century there was no specific category in the vital statistics in which to record the lung cancer deaths. It was not until 1949, after revision of the International Code, that classification of lung cancer became a statistical reality.

In 1912, Adler (57) in his famous text on lung cancer critically questioned the accuracy of the census reports emphasizing that the incidence of lung cancer was far greater than realized. The total number of recorded lung cancer deaths in the United States in 1914 was less than 400 reaching approximately 1,000 by 1920. On February 13, 1926, the Journal of the American Medical Association commented editorially that the number of cases in the preceding 15-year period was so great as to almost defy enumeration but the current national figure for lung cancer deaths was still less than 2,000. In 1930, when the number of lung cancer deaths in the United States was recorded as 2,837 Chevalier Jackson (58), the pioneer in bronchoscopic diagnosis, had records of almost 500 cases.

It is very apparent that the increase in lung cancer since 1930 was based on greater pathological knowledge and the development of techniques with which to diagnose lung cancer. However, the Report of the Advisory Committee states that a true increase in lung cancer has occurred and bases its contention on evidence furnished by State cancer registries and necropsy records from large general hospitals. The report cites the statistics in upstate New York showing an average annual rate of increase of 7 percent for males and 3 to 3.5 percent for females during the period 1947 to 1960. The presentation of the data in this manner is most misleading. Review of the total lung cancer deaths in New York State during the period under discussion shows that the rate of increase of lung cancer had declined from 42 percent between 1940 and 1945 to a low of 18 percent between 1955 and 1960. This could not have occurred in the presence of a true increase of the disease.

The report also cites autopsy data from large hospitals where "diagnostic accuracy has been uniform and excellent for many years." A rise in autopsy incidence in hospitals is not an index of an absolute increase of the disease. It is well known that many factors contribute to autopsy incidence among which are (1) increased pathological knowledge, (2) change in autopsy material with respect to sex and age (lung cancer is a disease of older age groups), (3) greater percentage of autopsies of "interesting" cases, (4) change in nature of cases hospitalized, and (5) wider selection of population (clinics in medical centers attract patients from large areas). The intense interest in lung cancer primed by the first successful surgical treatment by Graham (61) in 1933 and sustained by greater awareness of the disease has resulted in the hospital referral of many more lung cancer cases with subsequent increase in autopsies. The report compares the autopsy records at the Massachusetts General Hospital between the periods 1892–1929 and 1956–61 showing an increase from 17 lung cancers to 172 in the later period. From these figures it would appear that a true increase had recently occurred but an earlier report from the same hospital by King (37) showed that the increase had begun as early as 1920 and that by 1938 there were 475 cases diagnosed of which 158 had been confirmed by autopsy, biopsy, or exploratory thoracotomy. King, who had personally observed the increase in lung cancer hospital admissions attributed it to greater interest in diagnosis and surgical therapy.

Autopsy experience in lung cancer in the United States lagged considerably behind that of the German pathologic institutes. In the 1931 edition of Henke and Lubarsch's "Handbuch der Speziellen Pathologischen Anatomie und Histologie," Fischer's data on lung cancer included reports of almost 4,000 cases of which only a very small percentage were derived from American sources. The paucity of lung cancer autopsy reports in the United States in the early decades of this century was not due to absence of the disease but to absence of knowledge. This is well illustrated in a report by Jaffé (59), in 1935, showing that lung cancer comprised more than 11 percent of all the cancers at the Cook County Hospital in Chicago. This figure is comparable to the incidence during the present era. During the same period that Jaffé, a European trained pathologist in lung cancer diagnosis, found the proportion of lung cancer to all cancers to be 11 percent, the incidence at the Vancouver General Hospital was less than 2 percent, and was less than 1 percent at the University of Oregon (110).

There has been constant progress in the pathological diagnosis of lung cancer in all areas of the world. A review by Harvey (60) of the autopsy material at

the Royal Prince Alfred Hospital in Australia revealed an error of almost 20 percent in the diagnosis of lung cancer. There are also marked differences in pathological interpretation during the present era when, according to the "Report" pathological diagnosis has been uniform. Spain (114) in 1959 reported an increase in squamous cell carcinoma and a decline in adenocarcinoma and presented this as evidence of the carcinogenic effect of cigarettes. In contrast, Lee and Ts'o (115) in 1963 found the autopsy incidence of adenocarcinoma to be almost three times that of squamous carcinoma. One factor responsible for a considerable portion of the lung cancer autopsy increase was the observation by Barnard (62) in England, and Karsner and Saphir (63) in the United States, that certain tumors formerly diagnosed as sarcomas were, in actuality, cancers of the lung. The transfer of these oat cell tumors from one category to another automatically resulted in an autopsy increase of lung cancer which was only apparent. The frequency of incidence of oat cell tumors varies with different pathologists; Whitwell (116) found that oat cell cancers comprised as high as 41 percent of all lung cancers while many others found the incidence much lower.

It is interesting to observe the disdain with which the proponents of the smoking-cancer theory reject improvement in diagnosis as a major factor in the increase of lung cancer. Nevertheless, every diagnostic facility used at present to detect lung cancer was either discovered or perfected within the past three decades—the period of the great increase of lung cancer. Bronchoscopy, one of the most important diagnostic procedures, had been available for many years but was scarcely used prior to 1930 because of unwarranted anxiety as to possible hazards. It is of historical interest that at the Brompton Hospital in London, renowned for specialization in pulmonary diseases, only one bronchoscopic examination had been performed prior to 1925. Within three decades the number of bronchoscopies exceeded 800 per year. For more than a century physicians had been attempting to diagnose lung cancer by examination of the sputum for fragments containing malignant tissue. Although success was achieved sporadically, the procedure was tedious and hampered by technical difficulties. In the 1930's staining techniques were developed which facilitated sputum examination but the process remained essentially a research procedure. In 1943, Papanicolaou described a staining technique which within a few years became applicable to the routine examination of the sputum. The "Pap" smear for cancer cells in the sputum and bronchial aspirate has added significantly to the diagnostic approach during the two decades in which it has been utilized.

Surgical exploration of the chest is another procedure which has added to the number of cases diagnosed. Prior to the 1940's, exploratory thoracotomy was often considered a procedure of last resort and the indications were very limited. Since then refinements in surgical technique and anesthesia have made this a safe procedure with wide diagnostic indications. In 1949, a report from the Mayo Clinic by Johnson (64) showed that 50 percent of the lung cancers had been diagnosed only after surgical exploration. During the past two decades interest in thoraicic surgery has increased tremendously and thoracotomy is a routine procedure in practically all hospitals, disclosing cases of lung cancer which would otherwise remain undiagnosed. Surgery has also been of diagnostic value in the increased number of biopsy examinations utilizing new techniques. The greatest contribution to lung cancer diagnosis has been the vast increase in X-ray examinations which are now routine procedures in hospitals, clinics, doctors' offices, industry, and military organizations. Many of the lung cancers detected by routine X-ray examination have been entirely unsuspected. It seems hardly necessary to emphasize that the tremendous improvement in diagnostic facilities has resulted in a far greater recognition of lung cancer than was previously possible. Clinical experience has shown how easily lung cancer may be mistaken for pneumonia, tuberculosis, lung abscess, brain tumor, or even abdominal disease in the absence of appropriate diagnostic investigation. How much reliability can be placed on lung cancer mortality statistics during an era when the disease was not clinically diagnosable?

ACCURACY IN DIAGNOSIS

The vast improvement in diagnostic techniques have made it possible to detect greater numbers of lung cancers but have also revealed that there are many pitfalls in diagnosis not suspected previously. Autopsy studies have shown that cases diagnosed clinically as lung cancer, even with biopsy confirmation, may actually be secondary cancers. It is now well established that the lung

has a great affinity for metastatic tumors and that 30 to 40 percent (112, 113) of all cancers produce secondary plumonary growths, some of which may stimulate bronchogenic carcinoma.

The present classification of lung cancer deaths contains two categaries: (1) lung cancer, specified as primary, and (2) lung cancer, unspecified as to primary or secondary. The latest year for which lung cancer data have been completed is 1961. These figures show 38,929 total lung cancer deaths of which 19,462 (approximately 50 percent) were specified as primary. The remainder were unspecified which means that the lung cancers may have been primary in the lung, or may have spread to the lung from tumors originating in the pancreas, adrenal, kidney, stomach, ovary, or any other metastasizing cancer.

The statistician and epidemiologist, lacking experience in clinical diagnostic problems, are often totally unaware of the difficulties in differentiating between primary and secondary lung cancer. The fact that 19,462 cases were specified as primary lung cancer does not necessarily mean that the diagnosis was correct in all cases. It has become increasingly apparent to clinicians and pathologists working in the field of lung cancer that biopsy examinations may yield misleading information. The histological findings obtained by biopsy of a lymph gland or bronchus may simulate bronchogenic carcinoma and positive differentiation may not be possible. In a recent autopsy study (65) of cancer of the pancreas it was found that 12 percent of the cases had been diagnosed during life as primary lung cancer. Reports of erroneously diagnosed lung cancers on the basis of bronchial biopsy examination have also included cancers of the kidney, adrenal, ovary, thyroid, and rectum. Inasmuch as the 19,462 cases specified as primary lung cancer in 1961 were not all autopsied, there is a significant potential source of error to be considered.

The Advisory Committee to the Surgeon General placed the greatest reliance on statistical computations in arriving at its conclusions of a causal relationship between smoking and lung cancer. The report states, "In recent years, about two-thirds of the certification of lung cancer deaths have been based on microscopic examination of tissue from the primary site and the percentage is even higher for deaths under 75 years." The two references cited to validate the above statement appear as very tenuous endorsements. One report (66) is an evaluation of accuracy in a series of 1,837 death certificates in Pennsylvania. The conclusion with respect to primary lung cancer was based on a total of 21 cases with no mention made of the number of diagnoses based on autopsy. The second reference (67) discusses the general aspects of cancer diagnosis but presents no particular data on primary lung cancer. A study based on 21 lung cancer cases without autopsy confirmation is inadequate authority for a broad statement implying that over two-thirds of all the lung cancer deaths were confirmed pathologically.

RATE OF INCREASE

The so-called epidemic rise in certified lung cancer deaths in the United States has followed a pattern that, when scrutinized objectively, is more indicative of progress in diagnosis than of a true increase of the disease. This pattern shows a progressive decline in the rate of increase of lung cancer and was fully elaborated upon by Gilliam (68) in his studies at the National Cancer Institute. It is regrettable that the Advisory Committee disregarded this significant contribution in its epidemiological considerations.

The earliest statistics available (table I) show that the number of certified lung cancer deaths in the United States was 371 in 1914, and 956 in 1920. Although these figures are ridiculously low when compared to the large numbers of cases reported in European institutions during this era they represented an increase of more than 150 percent. A comparable trend was noted in the records of the Metropolitan Life Insurance Co. which showed an increase of 100 percent in the standardized annual death rate from lung cancer among its policyholders between 1917 and 1926. It is to be emphasized that this tremendous increase occurred before the era of widespread cigarette smoking. In the succeeding years the total number of lung cancer cases increased but the rate of increase declined.

TABLE I.—*Mortality of lung cancer in the United States*

Year [1]	Number of deaths	Percent increase
1914	371	[2]
1920	956	158
1930	2,357	146
1935	4,237	79
1940	7,121	68
1945	10,922	53
1950	18,313	67
1955	26,827	46
1960	37,500	39

[1] Data for 1925 not available.
[2] No comparative data.

Between 1930 and 1935 the increase was 79 percent; between 1940 and 1945 it was 53 percent; and between 1955 and 1960 it was only 39 percent. A comparative study (table II) of the lung cancer mortality statistics of New York State (no figures available before 1931) showed the greatest rate of increase, 64 percent, between 1931 and 1935. Since then the rate progressively declined and between 1955 and 1960 it was only 18 percent.

How is it possible to reconcile the declining rate of increase of lung cancer with the 200-fold increase in cigarette consumption during the same period? If tobacco is a cancer-producing agent there should have occurred a progressive rise in the rate of increase. A logical explanation for the progressive decline in the rate of increase is that it is a reflection of the increasing ability to diagnose lung cancer during the past three decades. In the early 1930's the mortality attributed to lung cancer was increasing among the white male population at the rate of approximately 10 percent per year. Thereafter, this percentage declined regularly and by 1958 the lung cancer deaths were increasing only at the rate of 5 percent annually. Among the white female population, the rate of increase declined from approximately 6 percent per year in the earlier period to about 1 percent in 1958. The recorded lung cancer deaths among the nonwhite population, although much smaller in number, showed the same downward trend in the rate of increase. The higher rate of increase in the nonwhite population was consistent with the accelerated improvement in medical facilities in recent years for this group.

TABLE II.—*Mortality of lung cancer in New York State*

Year [1]	Number of deaths	Percent increase
1931	615	[2]
1935	1,006	64
1940	1,440	43
1945	2,041	42
1950	2,711	33
1955	3,779	39
1960	4,451	18

[1] Data for 1930 not available.
[2] No comparative data.

The progressive decline in the rate of increase is a very significant factor in evaluating the carcinogenic effect of tobacco. If smoking produced lung cancer, directly or indirectly, the increased consumption of cigarettes would have resulted in a sustained or greater rate of increase. The fact that the opposite has occurred implies that there is a relatively fixed prevalence of lung cancer in the population and that with each succeeding decade the improvement in diagnostic techniques resulted in the recognition of a greater number of cases. Eventually, the incidence of lung cancer will be stabilized as it has been for many other cancers in which the investigative procedures have been standardized for long periods of time.

The experience in the declining rates of increase of the certified cases of lung cancer is very similar to that which occurred in the German pathologic institutes in the late 19th and early 20th centuries. This was the era when the diagnosis of lung cancer could only be definitely established at autopsy. In almost all of the major hospitals the rate of increase followed a definite trend consisting of a sudden rise, corresponding to the period in which pathologic diagnostic criteria were established, followed by a decline in the rate of increase as the disease became better known. At the Moabit Hospital in Berlin, Wahl (69) found a 300-percent increase in the percentage of lung cancers to all cancers between 1917 and 1923. The following year the rate of increase had declined to 17 percent. Schonherr (70) reported similar findings at the Pathologic Hygienic Institute of Chemnitz; comparing the periods 1898–1916 and 1919–22 there was a 110-percent increase in lung cancer autopsies which fell to 24 percent in the next 4 years. Comparable observations (see table III) were made by Materna (71) in Troppau, by Schlesinger (72) in Leipzig, by Engenolf (73) in Göttingen, and by Holzer (74) in Prague. At St. Bartholomew's Hospital in London, Maxwell and Nicholson (75) found that the greatest increase in the autopsy incidence of lung cancer had occurred between the periods 1884–88 and 1894–98.

TABLE III.—*Lung cancer in European hospitals in late 19th and early 20th centuries*

City	Institution	Author	Years	Percent total cancers	Percent increase
Moabit	Moabit Hospital	Wahl	1917–18	3.53	
			1923–24	14.08	300
			1924–25	16.45	17
			1925–26	12.35	0
			1926–27	13.10	6
Chemnitz	Pathologic Hygienic Institute.	Briese	1898–1916	4.51	
		Schonherr	1919–22	9.50	110
			1923–27	11.80	24
Troppau	Pathologic Institute	Materna	1912–14	2.08	
			1915–17	7.14	240
Zurich	do	Probst	1921–23	8.00	12
			1906–10	1.13	
			1911–15	3.34	190
			1916–20	6.12	83
Leipzig	do	Seyfarth	1921–25	7.17	17
			1900–06	5.01	
			1907–13		
			1914–18	11.23	120
		Schlesinger	1924–29	13.20	18
Göttingen	do	Feldner	1852–79	.62	
			1880–1908	.90	61
		Simross	1906–12	2.59	190
		Engenolf	1921–27	4.43	70
Dresden	Friedrichstadt Hospital	Reinhard	1852–76	.92	
		Wolf	1877–94		
		Junghanns	1893–1912	6.46	600
			1913–27	10.73	24
Prague	Pathologic Institute	Holzer	1895–99	.78	
			1905–09	2.24	190
			1915–19	4.81	110
			1920–24	7.98	66
London	St. Bartholomew's Hospital	Maxwell and Nicholson.	1884–88	3.91	
			1894–98	7.83	100
			1904–08	7.17	0

The rapid increase in the incidence of a disease when new clinical or pathological diagnostic techniques are introduced has been observed repeatedly. An excellent example is endobronchial tuberculosis, a very common complication of progressive pulmony tuberculosis. The condition has been undetected by pathologists in thousands of autopsies performed in this country and abroad. In the early 1930's clinical and bronchoscopic studies established the existence of endobronchial tuberculosis and this was reflected immediately in a tremendous rise in necropsy incidence.

The report of the Advisory Committee states (page 135) that "Lung Cancer mortality among males has risen at a fairly constant rate since 1930" and cites Gordon, et al (76) of the National Cancer Institute as reference. However, there seems to be some disparity between the report's interpretation and Gordon's

article which states, "For white males and females and for nonwhite males the increase in mortality for cancer of the lung and bronchus was greatest between 1930 and 1935 and has since tended to decelerate." The article also noted that the increase in lung cancer mortality began simultaneously for all adult age groups suggesting it was caused by increased diagnostic awareness.

SEX DISTRIBUTION

Cancer of the lung occurs predominantly among males. In the United States in 1930 there were 1,818 lung cancer deaths in males and 1,019 females (ratio =1.8:1). In 1940 there were 6,057 male and 2,029 female lung cancer deaths (ratio=3:1). A decade later there were 14,922 male and 3,391 female deaths (ratio=4.4:1). For 1960 the figures were 30,800 and 5,000 females (ratio =6.2:1). The progressive widening of the sex ratio during recent decades has been interpreted by many as an indication of greater diagnostic accuracy inasmuch as lung cancer has been found to be predominantly a disease of males. In 1947, Clemmenses and Busk (77) observed that the lung cancer sex ratio in Denmark between 1936 and 1945 was 2.4:1 whereas the ratio in a special diagnostic clinic in Copenhagen was 7.2:1. (This well-known study was omitted in the report). Low sex ratios were found in many of the lung cancer studies in the 19th century and reflected the difficulties in differentiating between primary and metastatic involvement. The disparity in sex distribution has led to assumptions by those unfamiliar with the biological characteristics of the disease that predominance in the male is the result of heavier smoking habits. The validity of this interpretation is readily challenged by (1) sex distribution of lung cancer before the era of cigarette smoking, and (2) the lack of any effect of the increased consumption of cigarettes by females on the sex ratio.

It is apparent from table IV that lung cancer was predominantly a disease of males during an era in which cigarette smoking was virtually nonexistent. Most of the studies show a sex ratio of at least 3:1, and some are comparable to ratios reported within the past decade. It is of considerable interest that as early as 1895, Wolf's cases of "primäre lungenkrebs" from the Dresden municipal hospitals showed a distribution of 6:1 favoring the male, and Passler, in 1896, found a ratio of 3:1 in a collected series of 68 cases. In Hare's "Pathology, Clinical History and Diagnosis of Affections of the Mediastinum," published in 1889, the ratio was also 3:1 in a series of 122 cases. Harris (78) in 1892, made a combined study of St. Bartholomew's Hospital and at the City of London Hospital for Diseases of the Chest and found a ratio exceeding 3:1. Lenhartz, (79) in Leipzig, reported a ratio of 13:1 in 1899, and Feilchenfeld (52), in 1901, a ratio of 10:1 in Berlin.

TABLE IV.—*Sex distribution of lung cancer before cigarette smoking era*

Author	Years	Place	Males	Females	Ratio
Hare, H	1830–80	Collected series	90	33	3:1
Buday	1870–88	Kolozsvár	9	1	9:1
Harris, V	1882–91	London	52	17	3:1
Passler, H	1878–94	Collected series	50	18	3:1
Wolf, K	1885–94	Dresden	27	4	6:1
West, S	1897	London	47	14	3:1
Lenhartz	1893–99	Leipzig	13	1	13:1
Feilchenfeld, J	1894–1900	Berlin	20	2	10:1
Riechelmann, W	1895–1901	do	21	6	3:1
Watsuji, S	1904	do	4	1	4:1
Redlich, W	1900–05	do	26	5	5:1
Haberfeld, W	1887–1906	Vienna	48	20	2.4:1
Karrenstein	1908	Berlin	24	8	3:1
Feldner, O	1908	Göttingen	6	1	6:1
Seydel	1900–09	Munich	16	4	4:1
Adler, I	1842–1911	Collected series	269	93	2.9:1
Dormanns, E	1901–11	Munich	7	1	7:1
Weller, C	1878–1912	Collected series	70	17	4:1
King, D	1875–1914	Boston	36	9	4:1
Rau, W	1909–14	Dresden-Friedrichstadt	13	2	6.5:1
Briese	1898–1916	Chemitz	44	16	3:1
Lavrinovitch	1915	Petrograd	42	19	2:1
Jaffe, R	1915–18	Vienna	92	8	11:1
Passey, R	1894–1918	Great Britain	579	182	3.2:1
Rau, W	1914–19	Dresden-Friedrichstadt	22	5	4.4:1
Eichengrun, W	1902–19	Cologne	32	5	6.4:1

Predominance of lung cancer in the male in the 19th century was evident in both the individual necropsy studies and in the collected series of cases. Adler's (57) collected series spanned more than seven decades and included cases from London, Prague, Berlin, Jena, Rome, Paris, Glasgow, St. Petersburg, Zurich and even Brooklyn. Despite the variety of sources the overall picture of male predilection was similar to Reichelman's (80) report in 1902 from the Friedrichshain Hospital in Berlin, Karrenstein's (56) in 1908, from the University of Berlin, and Briese's (81) report, in 1916, from the Pathologic-Hygienic Institute of Chemnitz. Weller (82), who was among the first American pathologists to become interested in bronchogenic carcinoma, reported, in 1913, a series of 87 collected cases with a sex ratio of 4:1.

In some instances it was possible to follow the sex ratio of lung cancer through several periods in the same institutions. In 1925, Berblinger (83) completed a necropsy study previously originated by Laeschka at the Pathologic Institute of Jena. Lung cancer predominated in the male for each lustrum beginning with 1910, and the ratio for the 15-year period was 4:1. Peters (84) found a ratio of 3:1 between 1905–08 at the Moabit and urban hospitals of Berlin and a ratio of 5:1 between 1917–22. At the Dresden and Friedrichstadt hospitals and nursing homes, Junghanns (85) found a ratio of 4:1 in the period 1893–97 and again in the period 1898–1902. Dormanns (86), found a sex ratio of almost 7:1 at the University of Munich in 1901–11 and again in 1922–31. In Cologne, Eichengrun and Esser (87) found a ratio of approximately 6:1 in the period 1902–14 and a 9:1 ratio in 1914–19.

One of the most significant studies was that of Passey and Holmes (88) from a group of teaching hospitals in England and Scotland covering a period of more than 30 years and including the eras before and after the onset of heavy cigarette smoking. They found a sex ratio of 3:1 for each of the periods 1894–98, 1899–1903, and 1909–13. Between 1914 and 1918 the ratio was 4:1, and between 1919 and 1923 it was again 3:1. The highest ratio was 4.5:1 which occurred in the period 1924–28.

The affinity of lung cancer for the male was present before and after the onset of the cigarette smoking era. Some of the sex ratios in the 19th century reports were actually higher than those obtained in recent studies. The alleged correlation between smoking and male predominance of lung cancer is based on a statistical association which ignores the fact that the disease favored the male when cigarette smoking was scarcely known. This point was emphasized in a report by Ibrahim (89) from the Dacca Medical College Hospital in East Pakistan where he found a sex ratio of 9:1 in a group of 20 lung cancer cases which included 14 nonsmokers, 4 occasional smokers and 2 heavy smokers. Cigarette smoking is a rarity in East Pakistan; the popular method of smoking is the hukka pipe with the water filter.

LUNG CANCER IN FEMALES

There has been a progressive increase in cigarette consumption by women for more than four decades. A survey of smoking patterns by the U.S. Bureau of the Census in 1955 stated that 18 million women, 18 years of age and over, had reported use of tobacco, and that 15 million had at one time or another been regular cigarette smokers. The corresponding figures for men were 38 million and 31 million respectively. The survey acknowledged that it had underestimated cigarette consumption by 15 percent on the basis of comparable tax data, and common observation suggests even a greater margin of error.

According to the various prospective and retrospective studies cigarette smoking is alleged to be a potent carcinogenic agent. It is difficult to reconcile this conclusion with the continued predominance of the disease in males despite the prodigious rise in cigarette consumption by females. During all the years of increased female smoking there has not been the slightest narrowing of the sex ratio indicative of a relative increase of lung cancer among women. It has already been emphasized that the sex ratio has actually widened. Inasmuch as diagnostic facilities are equally available to both sexes, it is more logical to assume that the predominance in males is the result of sex predilection of the disease rather than of smoking.

Data from the U.S. National Office of Vital Statistics show that lung cancer death rate between 1930 and 1958 increased 12 times for men and 3 times for women. The greatest increase among women occurred between 1930 and 1950 during which time the rate rose from 1.5 per 100,000 to 4 per 100,000. Since 1950 the rate showed little increase. The male to female ratio with respect to

mortality rates was 1.7 to 1 in 1930 and 6.6 to 1 in 1958 emphasizing the relative decrease among women during an era of heavy cigarette smoking. Mortality statistics in succeeding years show no indication of changing trends. The total increase of male lung cancer deaths between 1959 and 1962 was 4,665.[1] The increase of female lung cancer deaths for the 4-year period was 333 cases, averaging less than 85 cases per year.

It is evident from the foregoing that the tremendous increase in cigarette smoking by women did not result in any comparable rise in lung cancer deaths or in reduction of the sex ratio of the disease. During the past few years the female lung cancer death rate has remained virtually stationary. It is scientifically incongruous to attribute the etiology of lung cancer to cigarettes when more than 15 million regular women smokers show an annual increase of less than 85 cases. The rapid adoption of smoking habits by women about 40 years ago would have resulted in a continuing epidemic of lung cancer if tobacco were the causative agent.

AGE DISTRIBUTION OF LUNG CANCER

Observations for considerably more than a century have shown that lung cancer is primarily a disease of older age groups with most cases occurring in the fifth, sixth, and seventh decades. Simons, (111) in a collected series of more than 5,000 cases found that 80 percent had occurred between 40 and 70 years of age. Lung cancer is uncommon below the age of 40 and rare during the first three decades of life. It is seen, in table V that the predilection for older age groups was noted consistently in all the statistical reports before and after the onset of heavy cigarette smoking.

TABLE V.—*Age distribution of lung cancer*

Before onset of heavy cigarette smoking							After onset of heavy cigarette smoking						
Author	Year	Decade [1]					Author	Year	Decade [1]				
		4th	5th	6th	7th	8th			4th	5th	6th	7th	8th
Walshe, W	1846		+	+			Frenczy, K	1915		+	+	+	
Reinhard, W	1876		+	+	+		Seyfarth, C	1924		+	+	+	
Hare, H	1880	+	+	+			Hanf, O	1925			+	+	+
Buday	1888		+	+	+		Fishberg, M	1926		+	+	+	
Harris, V	1891	+	+	+			Shennan, T	1927		+	+		
Passler, H	1894		+	+	+		Schonherr, E	1927		+	+	+	
Wolf, K	1894			+	+		Wahl, S	1927			+	+	
West, S	1897		+	+	+		Maxwell, J	1928		+	+		
Lenhartz	1899			+	+		Kühn, C	1929		+	+	+	
Feilchenfeld, J	1900		+	+	+		Freemont-Smith, M	1929	+	+	+		
Riechelmann, W	1901	+	+	+	+		Schlesinger, M	1929			+	+	+
Sehrt, E	1903		+	+	+		Funk, E	1930	+	+	+		
Watsuji, S	1904		+	+	+		Buschbeck, H	1930		+	+	+	+
Redlich, W	1905		+	+	+		Sitsen, A	1931		+	+	+	
Haberfield, W	1906		+	+	+		Jaffe, R	1934		+	+	+	
Karrenstein	1908		+	+	+		Harvey, C	1935		+	+	+	
Seydel	1909		+	+	+		Halpert, B	1940		+	+	+	
Adler, I	1911		+	+	+		King, A	1942		+	+	+	
Dormanns, E	1911		+	+	+		Fried, B	1944			+	+	
Weller, C	1912			+	+		Rosenblatt, M	1949		+	+	+	
King, D	1914		+	+	+		Ibrahim, M	1953		+	+	+	
Rau, W	1914		+	+	+		Sabour, M	1960		+	+	+	
Briese	1916		+	+	+		MacFarlane, J	1960		+	+	+	

[1] Decades in which majority of cases occurred.

The age distribution of lung cancer has a definite relevancy to the etiological considerations. It has been alleged that cigarette smoking produces a cumulative carcinogenic effect over a period of approximately two decades. If this concept is valid, the segment of the cigarette smoking population which began smoking in the early teen ages should develop lung cancer before 40 years of age. No indication of this has occurred in over 40 years of heavy cigarette smoking. Data from the World Health Organization show a similar curve of age distribution in the United States, the United Kingdom, Germany, and Italy with the

[1] Mortality statistics for 1962 estimated by American Cancer Society.

greatest number of cases between 55 and 64 years of age and only a small proportion before 44 years of age.

The age at which the lung cancer patient started to smoke has no relation to the age in which the disease was acquired. Patients who began smoking in the early teen ages and those who began 20 or more years later developed lung cancer during the same later period of life; namely, in the fifth, sixth, or seventh decade. Furthermore, there is no evidence that the lung cancer patient who was a heavy smoker developed the disease at an earlier period of life than the patient who was a light smoker. If tobacco is a potent carcinogen the amount consumed and the duration of smoking should have some relationship to the onset of the disease. Passey (90) studied the smoking histories of 495 men with lung cancer and found that they had acquired the disease at approximately the same age regardless of whether smoking had been started at 6 years or at 41 years of age. It was also found that the number of cigarettes consumed daily did not influence the age of onset of disease; the light smoker was affected with lung cancer at the same age as the heavy smoker.

RELATION OF LUNG CANCER TO TOTAL CANCERS

During recent years lung cancers have comprised roughly 10 to 15 percent of all cancers diagnosed at necropsy and national mortality statistics have followed a similar pattern of distribution. It is of considerable interest, therefore, to observe that the same relationship was present before the era of cigarette smoking in certain European institutions with a long history of experience in lung cancer. Maxwell and Nicholson (75) found that between 1894 and 1898, the percentage of lung cancers to total cancers at the St. Bartholomew's Hospital was 7.83. Bonser (91) found the percentage of lung cancers at the Leeds General Infirmary to be 13.6 in 1896, 8.1 in 1899, and 10.9 in 1910. Hampeln (92) found a 12.5 percentage between 1894 and 1899 at the Riga Hospital. In Dresden, Junghanns (85) found the percentage to be 11.6 between 1893 and 1897, and 9.3 between 1898 and 1902. Seyfarth (93) found a percentage of 11.23 in Leipzig between 1914 and 1918. Jaffé and Sternberg (94) found a 10.73 percentage in Vienna between the years 1915 and 1918. Lipschitz (95) found 11.3 percent between 1919 and 1923 at the National Research Institute in Zwickau. The large proportion of lung cancers among total cancers in these reports is comparable to current relationships. In institutions unfamiliar with lung cancer the ratios were lower in the precigarette era and rose steadily with increasing knowledge of the disease.

THE PATHOLOGICAL EVIDENCE

The report of the Advisory Committee emphasized the pathological studies (96) that correlated certain types of epithelial changes in the trachea and bronchi with cigarette smoking and found that some of the changes were probably precancerous. The precise wording of the conclusion is interesting: "It may be concluded * * * that some of the advanced epithelial hyperplastic lesions with many atypical cells, seen in the bronchi of some cigarette smokers, are probably premalignant." One may speculate as to why a conclusion couched in such equivocal terms should be used to scientifically evaluate such an important relationship as smoking and lung cancer. A basic knowledge of the common inflammatory reactions of the trachea and bronchi does not justify such extrapolative predictions.

The pathological studies referred to in the report found certain epithelial changes in the trachea and bronchi of smokers and correlated them with changes found in patients with lung cancer. These changes consisted of loss of cilia, basal cell hyperplasia, and presence of atypical cells. Each of the changes were found increased in proportion to the number of cigarettes smoked. Among the nonsmokers, the changes were either absent or trivial. The report recognizes that changes are nonspecific but fails to mention that they have been associated with inflammatory bronchopulmonary disease for many decades before cigarette smoking became popular. Atypical proliferation of bronchial epithelium after pneumonia was described by Friedländer (97) in 1876 and similar changes secondary to tuberculosis were noted by Wolf (32) in 1895. There is an extensive literature (98) in postinflammatory epithelial changes antedating the era of cigarette smoking. The changes described in the report as identifiable with cigarette smoking occur commonly in a variety of pulmonary conditions including

bronchiectasis, bronchopneumonia, pulmonary infarction, tuberculosis, and lung abscess. They occur in smokers and in nonsmokers. Hyperplasia, metaplasia, loss of cilia, increase in goblet cells, and atypical cell formation are natural protective reactions of the bronchial epithelium. Squamous metaplasia is, in effect, an embryonal reversion to a primitive epithelial lining. The relationship between squamous metaplasia and bronchogenic carcinoma is highly speculative and evidence of progression from inflammation to malignancy is inconclusive. In autopsy studies (117, 118) in which postinflammatory changes have been associated with lung cancer the involvement has been limited to the peripheral areas of the lung which have not been implicated in the pathological studies on smoking.

The report stated that many of the histopathologic findings in the bronchial epithelium of smokers that were cited were confirmed by other investigators. However, it failed to mention that one of the most significant conclusions by the same investigations has been generally challenged. This was the finding of localized cancer (carcinoma-in-situ) in the bronchial epithelium of smokers to a degree comparable to patients with cancer of the lung (99). A summary (100) of 11 other studies comprising almost 1,000 noncancer cases showed that carcinoma-in-situ occurred in 1 instance. Mention must also be made of the revelation in the report of certain epithelial cells in the bronchial epithelium which typify ex-smokers. The alleged specificity of these cells is extremely doubtful. They are degenerated forms of columnar epithelium in which the nucleus has contracted or assumed an eccentric position due to accumulation of mucus. The cells have been observed in many inflammatory conditions in the lung and have been found in the nasal secretions of smokers and nonsmokers who have common colds.

THE EXPERIMENTAL EVIDENCE

One of the major obstacles in establishing a causal relationship between smoking and lung cancer has been the inability to obtain biological confirmation of the statistical association. Despite the many attempts to produce bronchogenic carcinoma in the experimental animal by exposure to cigarette smoke the results have been dismal failures. Mice have been frequently used in these experiments because of the tendency of certain strains to develop spontaneous lung tumors. Uniformly negative results were obtained by Campbell (124) in 1936, by Lorenz (119) in 1943, by Essenberg (120) in 1952, and Leuchtenberger (102) in 1960. In not a single instance has bronchogenic carcinoma been produced experimentally by exposure to tobacco smoke. The other forms of experimentation involved direct application of tobacco extracts or smoke condensates. Again, it was found impossible (121) to produce bronchogenic carcinoma with one glaring exception. Rockey (101) painted tobacco tar on the left main bronchus of dogs three to five times weekly through a fistula. Out of 130 dogs used in the experiment there was 1 which obligingly responded with the production of invasive carcinoma. The report acknowledges that this work has not been confirmed and there are aspects of the experiment which evoke skepticism regarding the implications.

It would seem reasonable that such overwhelming evidence of the lack of lung cancer producing properties of tobacco or its products should be an important consideration in the evaluation of a causal relationship between cigarettes and lung cancer. However, in the report, these negative results are treated as incidental findings and an extended effort is made to reconcile the failure to produce bronchogenic carcinoma experimentally with the smoking-cancer theory. Preceding the discussion on the carcinogenicity of tobacco, the report subtly vitiated the negative findings by emphasizing that "failure to produce cancer in a given test, by a given material, does not rule out the carcinogenic capacity of the same material in another species * * *." In another section, the report stated that certain polycyclic aromatic hydrocarbons in cigarette smoke have been designated as carcinogenic on the basis of tests in rodents and that therefore one can "reasonably postulate" that the same substances may also be carcinogenic in one or more tissues of man. The failure of some investigators to produce skin cancer in mice by applying various tobacco products is rationalized by explanations criticizing the technique of the experiments. The report quotes evidence that skin cancer can be induced in man by industrial exposure to soots, coal tar and pitch, and mineral oils. It then states that inasmuch as some of the hydrocarbons are also present in tobacco smoke, "it is reasonable to assume that these can be carcinogenic for man also." This type of syllogistic reasoning implicating tobacco as a carcinogen seems a very weak argument when confronted by the many million years of exposure of the fingers of the smoking population to tobacco without producing cancer of the skin.

The experimental evidence suggesting that certain hydrocarbons in cigarette smoke are carcinogenic for man is not substantiated by the low prevalence of lung cancer in smokers. The statistical risk of exposure to lung cancer is generally presented in terms of comparison between smokers and nonsmokers. The most recently publicized report of Hammond, found 110 lung cancers in 36,975 smokers and only 12 lung cancers in a "matched" group of an equal number of nonsmokers. The risk in the smoking group was 11 times that of the nonsmokers but the prevalence rate of lung cancer among the smokers was only 0.3 percent, or, 1 lung cancer in every 333 smokers. If cigarette smoking is a potent cancer producing agent it is difficult to explain why 36,865 smokers in the study group of 36,975 were not affected.

CHRONIC BRONCHITIS AND EMPHYSEMA

The manifestations of chronic bronchitis have been described for almost 200 years but the report of the Advisory Committee concluded that cigarette smoking was the most important cause. The disease was described by Coste (122) in 1767, by Badham (103) in 1808, by Laënnec (104) in 1819, by Eberle (123) in 1830, and by many others whose observations antedated the era of cigarette smoking by many decades. It is difficult to understand how cigarette smoking can be implicated as the "most important cause" of bronchitis when the disease was so prevalent before cigarette consumption became widespread. It is also difficult to understand how a causal relationship can be established between smoking and chronic bronchitis when the latter has been defined in an arbitrary manner, unrelated to specific pathological, biochemical, or physiological criteria.

Chronic bronchitis has been defined as a disorder characterized by productive cough on most days for at least 3 months of the year for not less than 2 successive years. The report acknowledges that the diagnosis of chronic bronchitis requires the exclusion of other bronchopulmonary diseases which produce identical symptoms. The crux of the problem is that the conclusions of the Advisory Committee were based on epidemiological studies from which other diseases had apparently not been excluded by appropriate diagnostic examinations. In most of the studies, the diagnosis was established solely on the basis of personal recollection. Chronic or recurrent productive cough may result from a variety of pulmonary conditions ranging from tumor to allergic rhinitis. Recurrent seasonal cough is a common symptom in many diseases. Residual inflammatory changes resulting from bronchopulmonary infections in childhood frequently produce cough and other respiratory symptoms in adult life. Symptoms interpreted as chronic bronchitis by the inquiring epidemiologist may have an entirely different meaning in clinical medicine.

The history (105) of emphysema also antedates the era of cigarette smoking but the report found that smoking was associated with an increased risk of dying from the disease. This correlation is very tenuous because emphysema is not a specific entity. It is an anatomical and pathological condition of the airspaces which occurs in a variety of diseases including bacterial pulmonary infection involving the smaller bronchi, tuberculosis, silicosis, and nonspecific pulmonary fibrosis. Emphysema may be found at autopsy in patients who presented no pulmonary symptoms during life and, conversely, may be entirely absent at autopsy in patients presenting all the typical symptoms, signs, and X-ray features of the disease. The findings in pulmonary function tests are not specific for the diagnosis of emphysema. In some instances the disease is already far advanced in early adult life; in others, the symptoms become apparent only with advancing age. The changes found in the lungs at autopsy range from local subpleural involvement to extensive bilateral alveolar distruction with the formation of giant air vesicles. The fact that a clinical diagnosis of emphysema based on symptoms may have absolutely no relationship to the actual disease destroys the validity of any statistical correlations.

EPIDEMIOLOGICAL EVIDENCE

Although the epidemiological surveys purport to investigate the prevalence of chronic bronchitis and emphysema, the absence of standardized diagnostic criteria militates against any accurate evaluation. The statistical studies have concentrated on symptoms which are supposed to be typical of the diseases under investigation. The conclusions concerning chronic bronchitis and emphysema contained in the report of the Advisory Committee are, therefore, based on the

association between smoking and certain symptoms rather than on a relationship between smoking and specific diseases.

The results of a series of studies revealed that, in general, smokers coughed more than nonsmokers. However, the wide variations in the incidence of cough suggests that this symptom, regardless of significance, may be due to many factors other than smoking. Table I, page 281, in the report summarizes the results in 11 surveys. The incidence of cough among smokers ranged from 6 to 54.8 percent. Among the nonsmokers, the incidence of cough ranged from 0 to 13 percent. The report characterized two studies with very low percentages of cough in smokers as involving "unusual types of population." One of the unusual populations consisted of unselected policyholders; the other was comprised of a military unit at time of discharge. It is difficult to understand why these categories should affect the alleged relationship between smoking and coughing. If the smokers in these groups represent a more healthy segment of the population, it is apparent that coughing is more related to other conditions than to smoking.

The expectoration of sputum was also equated with smoking with most of the studies emanating from the same sources as the surveys on cough. The incidence of sputum production in the smokers ranged from 11.4 to 64.7 percent; in the nonsmokers, the range was from 0 to 24.5 percent. The report found it interesting that, in most of the studies, the nonsmokers reported sputum production more frequently than cough. These findings are more than interesting; they are irreconcilable. Unless coughing is a nervous habit it is the result of a physiological reflex to eliminate the sputum which has accumulated in the tracheobronchial tree. The sputum cannot enter the pharynx under its own power; it must be coughed up. The discrepancy between the incidence of sputum production and cough exemplifies the type of irresponsible tabulation that has been utilized in the establishment of important conclusions.

In table 3, page 284, of the report is listed a summary of studies on the prevalence of both cough and sputum in relation to smoking. The range was from 7.2 to 51.0 percent in the smokers and from 0 to 8.9 percent in the nonsmokers. Not listed in the table is a report by Oswald and Medvei (106) which included occasional cough or sputum in addition to the more frequent and persistent symptoms. This study of more than 5,000 persons found 63.7 percent of the male smokers and 47.7 percent of the male nonsmokers with cough or sputum; among the females, 63.2 percent of the smokers and 47.7 percent of the nonsmokers had cough and/or sputum. Again, it may be pointed out that population prevalence studies of sputum or cough, no matter how painstakingly done, cannot contribute sufficiently accurate data for valid conclusions. It may be further emphasized that even if cigarette smokers have more cough and more sputum than nonsmokers this does not necessarily indicate that these symptoms are reflected in permanent pathological changes in the tracheobronchial tree.

The prevalence of breathlessness among smokers was also studied. The results showed variations of incidence similar to the survey's cough and sputum. In one study (107), approximately 25 percent of the male smokers and 17 percent of the nonsmokers admitted to breathlessness. In another study (108), the female nonsmokers were more breathless than the smokers. However, the female smokers over 45 years coughed and expectorated more than the nonsmokers even though they were less short of breath. Still another study (109) found more shortness of breath in both male and female nonsmokers than in the smokers. Experience in history taking has made it very apparent that subjective evaluation of breathlessness is fraught with potential error. There are any number of physiological conditions capable of producing sensations of breathlessness including anxiety syndromes. Latent cardiovascular disease, thyroid disorders, anemia, and other organic diseases may also be manifested in exertional shortness of breath. A correlative study between smoking and breathlessness must exclude all other causes by complete examination including laboratory studies. The report cites several studies correlating smoking with a heterogeneous assortment of respiratory conditions ranging from "chest illness" to "irreversible obstructive lung disease." Among males, the prevalence of these conditions was found higher in smokers; among females, the differences were less marked and, in some surveys, there were differences found between smokers and nonsmokers.

SUMMARY

1. Historical studies show that lung cancer had been prevalent for a century before the era of widespread smoking.

2. Progress in the diagnosis of lung cancer during the past three decades has resulted in the recognition of far more cases than was previously possible.

3. The rate of increase of lung cancer has progressively declined in the past 40 years despite the 200-fold increase in cigarette consumption.

4. Lung cancer has occurred predominantly in males in the 19th century and in the era of cigarette smoking; the sex predilection is a biological characteristic and not a result of smoking.

5. There has been no comparable increase of lung cancer in females despite the prodigious consumption of cigarettes; the rate in increase has already been stabilized in females.

6. Lung cancer has occurred predominantly in the 5th, 6th, and 7th decades during the 19th century and in the era of cigarette smoking; the age distribution has not been influenced by duration of smoking or by smoking habits.

7. In institutions with long experience in lung cancer the percentage relationship of lung cancer to total cancers in the 19th century was similar to percentages prevailing at present.

8. The pathological evidence presented in support of the smoking-lung cancer theory is equivocal and the conclusions are unwarranted.

9. There is no valid experimental evidence confirming the smoking-lung cancer theory; bronchogenic carcinoma has never been produced by exposure of experimental animals to tobacco smoke.

10. The allegations that bronchitis and emphysema are related to smoking are based on the most tenuous assumptions; the diseases are defined arbitrariiy and the conclusions are therefore meaningless.

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Mr. KORNEGAY. The next witness is Dr. Thomas J. Moran.

Doctor, would you come around, please? Dr. Moran, we are very happy to have you before the committee today and you may proceed in your own way, as you wish.

STATEMENT OF DR. THOMAS J. MORAN, PATHOLOGIST, DIRECTOR OF LABORATORIES, THE MEMORIAL HOSPITAL, DANVILLE, VA.

Dr. MORAN. My statement is essentially a summary. I should like to say first I appreciate very much the opportunity to appear before this committee.

I am Dr. Thomas J. Moran, a pathologist, of Danville, Va. I was born near Pittsburgh, Pa., and received my education at Langley High School in Pittsburgh and at the University of Pittsburgh. I received my M.D. degree from the University of Pittsburgh School of Medicine in 1936. I interned at the Mercy Hospital in Pittsburgh and took my residency in pathology at the Pittsburgh City Hospital. I have been in the practice of pathology for about 26 years. During this time I have also been director of the tumor clinics of the hospitals with which I have been associated.

I was professor of pathology at the University of Pittsburgh School of Medicine and director of the laboratories at the Presbyterian-University Hospital of the University of Pittsburgh Medical Center until August 1962, when I accepted the position of director of laboratories at the Memorial Hospital in Danville, Va.

I am a diplomat of the American Board of Pathology and a member of six professional pathology societies in this country as well as the International Academy of Pathology, the Pathological Society of Great Britain and Ireland, and the College of Pathologists (Great Britain). I have been president of the Pittsburgh Pathology Society, the Pennsylvania Association of Clinical Pathologists, and vice presi-

dent of the Virginia Society of Clinical Pathologists. I am a member of the publications committee of two medical journals, Gerontology and the Geronotologist.

I have published approximately 40 articles in medical journals, most of them dealing with lung pathology. Several of my recent articles have dealt specifically with the reaction of the lung to various chemical injuries, including the comparison of the changes observed to the malignant changes seen in animal or human lung cancer.

This research has been supported for a number of years by grants from the National Institutes of Health. Several other of my research pojects have also been supported by the National Institutes of Health as well as by other health agencies. I have supervised for a number of years trainees of the National Cancer Institute and fellows of the American Cancer Society. I have recently been invited to participate in an International Conference on Lung Tumors in Animals in Perugia, Italy, in June 1965, at which time my experimental work in this field will be presented.

My research work has dealt essentially with the reaction of the lung to various injected irritants such as food, milk, gastric juice, alcohol, and weak hydrochloric and nitric acid solutions.

In many of these experiments striking changes were observed in the bronchial epithelium. Some of these changes were so severe that they looked like tumors and many areas closely resembled human cancer of the lung. They also resembled the changes described by Auerbach and his coworkers in autopsies from lungs of heavy smokers.

We then attempted to produce lung cancers by injecting nitric acid and studying the animals for long periods of time. We also modified the experiment by giving cortisone to the animals, in some cases after the injection of the chemical into the lung, in other cases by beginning cortisone treatment at different time intervals before the injection of the chemical into the lung.

In many animals a picture resembling human lung cancer was produced. However, in animals studied for long periods of time both the lesions resembling cancer and those resembling the picture in human lungs of heavy smokers, gradually disappeared.

I have reprints of several of my published reports of this work which can be filed with the committee.

In connection with the question of a possible causal relationship between cigarette smoking and cancer of the lung, I should like to submit the following three conclusions and a brief discussion of my reasons for arriving at these conclusions:

(1) Statistical evidence accumulated thus far is strong enough to suggest the possibility of a connection between cigarette smoking and cancer of the lung. This possibility should be investigated further by all available scientific methods including further clinical studies, statistical data, chemical analysis, and animal experiments.

(2) The evidence submitted thus far by proponents of the theory that lung cancer is caused by smoking (including the committee appointed by the Surgeon General to analyze available data on the subject) does not constitute scientific proof of this theory. Acceptance of this theory is not only unscientific but dangerous since acceptance of this theory will lead to complacency concerning the etiology of this disease and might well prevent fruitful investigation along other lines.

(3) Existing research programs should be continued and new ones developed in an attempt to determine the cause or causes of all cancers including those of the lung. Among some of the possible causes of lung cancer needing further study are viruses, industrial or occupational exposure, atmospheric pollution, and chronic inflammation and scarring of the lung such as occurs after influenza, bronchitis, bronchiectasis, and many other benign lung conditions.

My reason for conclusion No. 2, that it has not been scientifically proven that cigarette smoking causes cancer of the lung, can be summarized as follows.

The evidence quoted by proponents of the cigarette smoking-lung cancer theory is generally of three types: (1) Statistical or epidemiological; (2) animal experiments; (3) human clinical and autopsy studies.

It is my belief that the only strongly suggestive evidence that smoking may be a factor in lung cancer lies in the field of epidemiology, in other words the statistical evidence. There are a number of widely quoted studies suggesting that people with a history of prolonged and excessive cigarette smoking have a higher incidence of lung cancer than the general population.

However, even among epidemiologists and statisticians there are numerous differences of opinion and various interpretations of these studies.

In a recent analysis of 1,229 lung cancers at the University of Bonn in West Germany by Poche, Mittman, and Kneller, the authors found no connection at all between smoking and cancer of the lung. They divided the patients with lung cancer into three groups: nonsmokers, light smokers, and heavy smokers and found the same incidence of lung cancer in all three groups and the average age of occurrence of the cancer in all three groups was exactly the same.

Of the different factors they studied, occupation was the only important positive factor, suggesting to them that industrial exposure may be related to lung cancer. This study dealt with all forms of lung cancer but especially with the squamous cell or epidermoid type, which is the one most frequently cited in the reports by proponents of the smoking-lung cancer link.

Since I am not an epidemiologist or statistician I will not attempt to analyze the statistical evidence critically or in detail.

I will list, however, some of the more important general objections to the statistical conclusion that smoking is a cause of lung cancer. These objections have been recognized in many statistical studies.

(1) Over 95 percent of smokers, including heavy smokers, do not develop lung cancer.

(2) Lung cancer of all types including squamous cell (or epidermoid type) occurs in nonsmokers.

(3) There is relatively little cancer of the mouth, nose, throat, or trachea, although these areas are more exposed to cigarette smoke than the lungs, and the incidence of cancer in these organs is not increasing.

(4) Lung cancer occurs much more frequently among men than women, and the disparity is growing, although smoking among women has been common now for about 40 years and smoking among women has been increasing rapidly during that period.

(5) The incidence of lung cancer varies widely between different localities, as for example between the States of New York and Idaho

and the cities of New Orleans and Atlanta. There is also a higher incidence of lung cancer in urban populations as compared to rural.

(6) There is more lung cancer in England than in this country, despite the fact that heavy smoking is more common in this country.

Many other criticisms, both of methodology and interpretation of the statistical surveys, have been made by qualified statisticians and epidemiologists.

The second type of evidence quoted by those who believe that cigarette smoking causes lung cancer is animal experimentation. To me the experimental evidence presented thus far has little or no application to the problem of human lung cancer. It is true that some skin cancers have been produced by application of the so-called tobacco tar to the skin of tumor susceptible animals.

However, similar cancers can be produced in the skin of sensitive animals by painting the skin with a variety of substances including some common foods.

No one has produced lung cancers in experimental animals by exposing them to cigarette smoke, although this has been tried by many research workers and many animals have been kept in an atmosphere filled with cigarette smoke for prolonged periods. These animals develop certain changes in the bronchial epithelium similar to those seen in the lungs of heavy smokers at autopsy.

However, none of the animals with these changes have developed lung cancer and when the animals are removed from the cigarette smoke the changes gradually disappear.

On the other hand, cancers of the lung have been produced in animals by inoculation of viruses (Rabson) and by inhalation of viruses and aerosols of hydrocarbons, which are substances present in high concentration in gasoline fumes (Kotin).

Changes similar to those seen in human lungs of heavy smokers and changes even more suggestive histologically of cancer can be produced in a variety of ways in experimental animals. For example, in my own experiments which I have mentioned in which rabbit lungs were damaged by a chemical agent such as gastric juice, hydrochloric acid, alcohol, or nitric acid and especially in several groups which were pretreated by administration of cortisone, there were striking changes in the bronchial lining similar to but more severe than those described in human smokers' lungs.

However, none of these animals developed lung cancer, and although the animals were studied for long periods of time after exposure to the chemicals the changes gradually disappeared. The importance of these observations is that it is not always possible to predict biologic behavior from histologic appearance, and in the case of the changes described in human smokers' lungs I do not believe it is proper to call these malignant or premalignant lesions. They occur in too many benign conditions.

In brief, animal experiments have contributed nothing directly applicable to the problem of cigarette smoking and human lung cancer.

The third type of evidence quoted by proponents of the cigarette smoking causes lung cancer theory is in a general group of clinical and autopsy studies. Here again the clinical evidence is statistical and the statistics are subject to the same defects and objections already described. The autopsy evidence quoted is confined largely to several studies carried out by Auerbach and others in which certain changes in the lining epithelium were described in the lungs of heavy

smokers. These changes have been interpreted as premalignant or as leading to lung cancer. There is no solid evidence to support this claim.

The changes are not specific for smokers; they may be seen in a variety of benign conditions, and they may be produced experimentally both in lungs of animals exposed to cigarette smoke and a variety of other materials without ever leading to lung cancer.

In experimental animals, they can be shown to disappear after the irritant has been removed. This, as far as I am concerned, eliminates the application of these observations to human lung cancer.

In summary, I wish to submit my opinion that there exists enough evidence of a statistical association between cigarette smoking and lung cancer to justify considerable additional research in this area, but that the cause or causes of lung cancer, as all human cancer, has not yet been scientifically established and research into its causation along all possible avenues of approach is urgently needed.

Thank you.

Mr. KORNEGAY. Thank you, Dr. Moran.

Mr. Younger, do you have any questions?

Mr. YOUNGER. Thank you, Mr. Chairman.

Do you know any of the doctors that were on the Surgeon General's Panel?

Dr. MORAN. Yes, sir. I know Dr. Farber who is at the University of Pittsburgh. He is the only one I know personally.

Mr. YOUNGER. Would you consider that panel as representative of those that are interested and who have devoted their lives to lung cancer?

Dr. MORAN. I would say that I think that the Committee is a very fine group of men. I think they have done as honest and dedicated a job as they possibly could. I believe there was the limitation which has been mentioned previously, that anyone who had expressed an opinion in this particular area was eliminated from the Committee. This would naturally eliminate many people who had worked in the field directly and who had strong opinions one way or the other.

I have no fault to find with the main body of the report, except that I think in the report there are many exceptions and probables and possibles and suggestives, which are phrases which qualify the report, which are not included in the conclusion.

This is my principal objection to the report.

Mr. YOUNGER. Thank you.

Mr. KORNEGAY. Dr. Moran, we want to thank you for coming and taking your valuable time to give your statement to the committee. I have just one question to ask you, sir. Based upon your knowledge and acquaintance with the report to the Surgeon General on smoking and health, is there sufficient evidence in that report to link cigarette smoking with lung cancer and to justify and warrant the labeling of every package of cigarettes with the warning that has been proposed by the Federal Trade Commission to the effect that cigarette smoking is dangerous to health and may cause death from cancer or other diseases?

Dr. MORAN. No, sir; I do not.

Mr. KORNEGAY. Thank you very much.

That concludes our hearings for today. The committee will stand adjourned until 10 o'clock Thursday morning.

(Whereupon, at 5 p.m. the committee recessed, to reconvene at 10 a.m., Thursday, July 2, 1964.)

CIGARETTE LABELING AND ADVERTISING

THURSDAY, JULY 2, 1964

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The committee met at 10 a.m., pursuant to call, in room 1334, Longworth Building, Hon. Oren Harris, chairman of the committee, presiding.

The CHAIRMAN. The committee will be in order. We have a good many witnesses yet to be heard on this important subject. I observe that we have a number of our colleagues with us this morning. I think we should give them an opportunity to make a statement and in the meantime I suggest that since we have so many witnesses this morning that they be as brief as they feel they can and make their own position known.

We will not be able to meet beyond noon because of the House meeting today. We certainly do want to get to these people who are out of the city. I observe our colleague from Minnesota, Mr. Blatnik, is here. He has been interested in this problem, as well as others of our colleagues, for some time and has introduced one of the bills, H.R. 9668.

Mr. Blatnik, we will be glad to hear you at this time.

STATEMENT OF HON. JOHN A. BLATNIK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. BLATNIK. Thank you, Mr. Chairman, and members of the committee. Mr. Chairman, I ask permission to extemporize and summarize as I can have a statement and have permission to extend or revise my complete statement.

The CHAIRMAN. Yes, indeed, you may include your statement in the record.

Mr. BLATNIK. You do have a long list of witnesses ahead of you.

(The document supplied follows:)

STATEMENT OF HON. JOHN A. BLATNIK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. Chairman, I appreciate the opportunity to appear this morning before your distinguished committee. In view of the gravity of the subject it is particularly appropriate that you chose to conduct these hearings before the full committee.

Before getting into the substance of my two bills which are before you today, I would like to give you some background and some of my experience in the broad field of tobacco and smoking.

In 1957, as chairman of the Legal and Monetary Affairs Subcommittee of the House Committee on Government Operations, I started to bring before the

American people the real story of false and misleading cigarette advertising. From 1949 to 1954 a series of studies and articles were published indicating a strong relationship between cigarette smoking and the incidence of cancer. In 1953 cigarette sales dropped for the first time in 21 years, a trend which continued in 1954. Coincidentally came the development of the filter cigarette with claims of substantial reduction of nicotine and tar. Indicative of public acceptance of these advertising claims was the meteoric rise in filter sales from 5.2 billion in 1952 to 164 billion cigarettes in 1957.

In July 1957 my subcommittee began to delve into these advertising claims in a series of hearings. In order to relate the health claims to reality, the subcommittee took a look at some of the results to that time of studies on the relationship of smoking to cancer. A public forum was provided for medical research scientists, whose findings indicated a most significant relationship between cigarette smoking and the incidence of cancer. One of the chief witnesses was Dr. Cuyler Hammond of the American Cancer Society, whose reports to the American Medical Association showed a lung cancer death rate for cigarette smokers 11 times that of nonsmokers.

With this scientific background the subcommittee analyzed the claims of cigarette advertisers. Six major brands were simultaneously claiming they were "taking out more tar and nicotine than other leading brands." We questioned the heavily advertised claim: "gives you more of what a filter is for," and requested tobacco industry officials to appear before the committee to explain just "what a filter is for." Both public and private invitations to the industry were unsuccessful. Their reluctance to appear at that time is in marked contrast to their attitude today.

The committee also discovered that after the advent of the filter, tobacco companies began using cheap, low-grade tobacco in filter brands, actually resulting in more tar and nicotine getting to the smoker than from most "regular" nonfilter cigarettes using higher grade, more expensive tobacco. These findings are a matter of record.

It was noted at the hearings that one-half billion dollars was being spent yearly in advertising, manufacturing, and selling the filter "gimmick." I asked a medical cancer researcher what could be done with that money if it could be applied to a crash program of cancer research. The witness stated that with that much money available, he felt that the source, cause, and cure for most of the major forms of cancer could be found within 6 years. That was 7 years ago.

In its final report, my committee alleged, "The cigarette manufacturers have deceived the American public through their advertising of filter-tip cigarettes." The committee also rapped the Federal Trade Commission for failing in its statutory duty to prevent deceptive acts or practices in cigarette advertising. The report criticized the Surgeon General and the Office of Education for not making more information on the harmful effects of smoking available to the public and especially to high schools and colleges.

It is now 7 years since the hearings of 1957. The debate still goes on. Mr. Chairman, the returns are all in. I believe it is now time for action on this serious national problem.

The revelations since 1957 have only confirmed the relationship between smoking and cancer. Since that time the evidence has continued to accumulate that cigarettes are a causative factor in the incidence of cancer. On the hazards of smoking, we have now heard from the American Cancer Society, the National Cancer Institute, the National Heart Institute, the American Heart Association, the British Medical Research Council, the American Public Health Association, the National Tuberculosis Association, a World Health Organization Study Group, the Royal College of Physicians of London, the Canadian Cancer Society, the Dominion Council of Health of Canada, the Canadian Public Health Association, the American College of Chest Physicians, and numerous State and local medical associations. We have even heard finally from the American Medical Association.

The report of the Surgeon General's Advisory Committee on Smoking and Health did a remarkable job of assembling and interpreting the major studies. The experts on the Committee were selected by a completely impartial method, with the cigarette industry having a veto over every appointment.

Now we have heard from the industry that the Committee's report is not conclusive and that more study is required. After all the studies, after all the warnings by our Nations' top medical experts, we are told any action must await further research. I do believe the tobacco industry is smoking opium.

When typhoid fever first struck, no one knew the germ which caused it. But they did know that people drinking from certain wells became ill and those drinking from others did not. I don't believe there were any suggestions that labeling of the contaminated well await years of scientific research to confirm that the well was in fact lethal.

We hear that, in spite of the fact that the Advisory Committee had pinpointed cigarette smoking as a causative factor in certain types of cancer, other factors are involved which mitigate against accepting this conclusion.

I know how these other factors work. For instance we know that ladies who wear stockings have a higher incidence of cancer than those who do not. Closer analysis, however, shows that it is the sophisticated girls of the city who smoke more cigarettes—and, incidentally, wear out more stockings.

The cigarette industry states that statistical studies could be made to show a relation between cancer and alcohol, city living, divorce, and poverty. This sophistry was effectively demolished in a study presented to the American Medical Association by Dr. Cuyler Hammond. In a study of over 30,000 "matching pairs"—individuals matched to obtain almost identical physical and psychological background, environment, and habits—Dr. Hammond showed that, with all other factors being equal, smokers still had an incidence of lung cancer 11 times higher than nonsmokers. The Committee stated in appropriate bold black letters, "CIGARETTE SMOKING IS A HEALTH HAZARD OF SUFFICIENT IMPORTANCE IN THE UNITED STATES TO WARRANT APPROPRIATE REMEDIAL ACTION."

It is time to stop quibbling over whether a health hazard is involved in smoking. The question before this committee is "What is the appropriate remedial action?"

First, I would like to analyze the problem as I see it. I am not against smoking per se. I do not seek a prohibition on cigarettes or cigarette advertising. I do not seek to put the tobacco industry out of business, nor do I buy the predictions of the prophets of doom who see the tobacco industry suffering substantial economic injury as a result of a policy of honest disclosure in cigarette advertising. I have nothing but praise for the industry's contributions to the cause of education, culture, and medicine. I fully expect the industry to be around for years to come in a sufficiently viable economic condition to continue making these fine contributions.

What I think is most important is that those who choose to continue to smoke be under no illusions regarding the adverse effects of smoking on human health. Furthermore I believe it is imperative that those who make the crucial initial decision to smoke be educated to the consequence of that decision. A necessary corollary to this educational process is a program to insure that cigarette advertising is (1) truthful, (2) not calculated to induce youth to begin smoking.

Section 3(b) of my Cigarette Health Hazards Act, H.R. 9668, states that it is the policy of Congress to publicize, and to educate the public to, the health hazards involved in the use of cigarettes. Section 4(3) directs the Secretary of Health, Education, and Welfare to—

> Conduct an education program to inform and educate the public to the health hazards involved in the smoking of cigarettes and to the means which they can employ to avoid or reduce such hazards; and, in the conduct of such a program, the Secretary shall be authorized to purchase space and time in commercial media.

The bill also calls for research in determining the substances to be found in cigarette smoke and the effect on the human body, as well as research in other areas relating to smoking. This research is important. The Surgeon General testified last week that the Department has several ongoing research programs. However, I believe it is important that we put into perspective the relative values of education and research. If I may paraphrase Dr. Charles Tate of Miami—who spoke out on this subject at the AMA convention—the call for further research to the exclusion of positive recognition of the results of smoking is "like a man looking for the cause of a fire while his children are screaming for help."

The need of our youngsters, for positive, forthright, information on the dangers of smoking is a problem which begs for attention. Let's not ignore it in favor of spurious cries that more research is necessary before we act. Education must march shoulder to shoulder with research; in fact, let's put education a few paces ahead.

While the Public Health Service appears to be moving ahead in the field of research and education their authority to act in this area is not as clear as it should be. It is important that we give to their efforts a firm underpinning of congressional intent. H.R. 9886 would accomplish that.

Advertising, the second phase of the problem, is covered by my bill, H.R. 9655, the Cigarette Advertising and Labeling Act. Cigarette advertising has changed since the hearings of 1957. Health claims have been replaced by health disclaimers. Blatant deception has given way to subtle sophisticated come-ons linking smoking to youth, romance, and virility. The need to place reasonable curbs on this advertising remains.

I am particularly concerned about our young people. They are faced with a decision to smoke or not to smoke. Yet they have neither the knowledge nor the maturity to equip them to face this decision which could result in adoption of a lifelong habit. If we do nothing else we must protect our children from the steady drumming of cigarette commercials from early childhood on, which conditions them to acceptance of smoking as a desirable and, even necessary, social habit.

I am aware of the forward-looking steps which the cigarette industry has taken in response to criticism of its advertising. They have established a cigarette advertising code. They have selected a very able, honest, and conscientious code administrator in Gov. Robert Meyner. I know that he will administer the code with complete impartiality and with the public interest at heart. Yet I am concerned that the code does not go far enough. The language of the new code prohibits cigarette advertising on television and radio programs "directed primarily to persons under 21 years of age." The problem today is that millions of youngsters remain glued to their television sets whether or not the program is directed primarily at them. Of the top 10 TV shows sponsored by cigarette companies, none can be said to be directed primarily at minors. Yet their child and adolescent audiences (as reported in Advertising Age) range from 7.1 million for "The Lieutenant" to 19.1 million for the "Beverly Hillbillies." These figures are cited only to give an order of magnitude, for, based on the investigation of this committee into television ratings, is it too much to ask: "How is the code administrator really going to know the size of the adolescent audience of particular programs? How is he really going to determine whether a particular program is watched primarily by the young?"

Furthermore, the code has no provision for positive warning of the dangers of cigarette smoking. Yet this warning is a basic part of full and adequate disclosure. Surely such labeling should occur at the time inducement is made to purchase a hazardous product; that is, during the commercial advertisement.

Many household products which are potentially dangerous are labeled accordingly, without inhibiting successful marketing. Distilled spirits increase their markets yearly yet undertake a discrete advertising campaign making absolutely no use of television.

I feel it is ironic that the Federal Trade Commission, criticized for their excessive timidity by my committee 7 years ago, is now on the firing line for exceeding its authority. I strongly believe that the best move that Congress could make is to equip the Federal Trade Commission to back up its regulations issued last week. Under existing legal procedures, these regulations could be tied up in litigation for years. The provisions of my bill, H.R. 9655, the Cigarette Advertising and Labeling Act would permit the Federal Trade Commission to obtain temporary injunctions which would be applicable while litigation was underway. Furthermore, it would clarify and make certain the authority of FTC to act in this field and provide a ringing congressional endorsement of the leadership exercised by the Commission.

Mr. BLATNIK. Mr. Chairman, I am directing some of my comments to H.R. 9655 and H.R. 9668, two bills of which I am the sponsor. H.R. 9655 is known as the Cigarette and Labeling Act and it would give the Federal Trade Commission the same power to regulate cigarette advertising and labeling as it now has to regulate drug advertising, including the power to enjoin the dissemination of packages and advertising, which fail to conform to advertising and labeling standards set by the Federal Trade Commission. The standards are listed in the bill and are not repeated here.

The bill, H.R. 9668, entitled "The Cigarette Health Hazards Act," provides primarily for education and research by the Department of Health, Education, and Welfare, and the bill commences with a congressional finding of fact that the smoking of cigarettes constitutes a grave hazard to the public health. It directs the Secretary of HEW to conduct programs of research and do other advanced studies to aid individuals on the smoking problems.

Mr. Chairman, this is a very difficult problem. There are no clear answers. I respect and understand fully the problems that face the tobacco industry and the efforts—and very earnest efforts—they have made from their point of view. I understand the economics involved and the great importance of the industry in terms of a large agricultural sector in the eastern and southeastern part of the country, the processing, the manufacturing, the tax revenues to both the municipalities and the States and the Federal Government, and so forth. But I do say, Mr. Chairman, that this is an issue that ought to be pursued in a fair but very firm, determined, and persistent manner.

I say for this record that it was only 7 years ago when a committee of Congress first entered into this field of the results of excessive and prolonged smoking on human health and the propriety of advertising simultaneously paid for and advanced by the cigarette industry. Between 1949 and 1954, a series of studies came out indicating that there was quite a relationship between excessive and prolonged cigarette smoking and incidence of cancer.

It was not very definitive. But the reports on those medical studies, in rather initial stages, was enough to cause a public flurry and there was a sharp drop in the normal consumption of cigarettes. In fact, in 1953, cigarette sales dropped for the first time in 21 years. About the same time the cigarette people began to develop, and very properly so, a filter. In initial stages, good success was had with the filter. Public acceptance was very good. Public acceptance is indicated by the rapid rise in popularity of the filter. In 1952 there were sales of a little over 5.2 billion cigarettes with filters; 5 years later it jumped to 164 billion. That is over a 3,000-percent gain in 5 years. But at that time I recall very well, Mr. Chairman, our Legal and Monitor Subcommittee of the Government Operations Committee went into the responsibility of the Federal Trade Commission for enforcing propriety in advertising.

I will say frankly the advertising by the tobacco industry at this stage was irresponsible—not that I am passing on guilt—this is about as close as being irresponsible, as I can say. They plugged the filter; they advertised in paid ads, "it gives you more of what a filter is for." By the way, we never did find out what a filter is for.

We asked the tobacco people, and those who were advertising, "what is a filter for?" and they would not tell us. We could have subpenaed them. I didn't think it was proper, and we did not. They plugged for years "A filter gives you more for what a filter is for," and to this day we don't know what it is for.

It was advertised: "It takes out more tar and nicotine than any other leading brand." We didn't mind them saying that but we found five or six of them saying it simultaneously so we asked the Federal Trade Commission which of the five or six were lying. We never found out which of the five were lying. What really disturbs us was

that we found in several instances that while the filter was taking out more tar and more nicotine, through that same filter more tar and more nicotine was also going into the human system at a greater cost financially than was getting into the system through the old regular nonfilter type cigarette. That is an irresponsible proposition. We feel we had a good deal to do—I am trying to be modest—with the cigarette industry voluntarily ceasing and desisting from advertising that a filter gives you more of what a filter is for and that it takes out more tar and nicotine than any other leading brand.

The reason more tar and nicotine was simultaneously going through that filter into your system while it was taking out more was that they were putting a cheaper tobacco into the cigarette. Instead of a 42- or a 47-percent Flue-cured, the light brown high grade tobacco, they were using the dark burley tobacco, called homogenized, at 19 cents a pound.

Mr. YOUNGER. Would the gentleman yield for one question?

Mr. BLATNIK. I will be pleased to yield.

Mr. YOUNGER. I didn't get the report of the investigation you are quoting from.

Mr. BLATNIK. The Legal and Monetary Subcommittee of the Government Operations Committee of the House, Congressman.

Mr. YOUNGER. What year was that?

Mr. BLATNIK. That was the year of 1957, about 7 years ago.

Mr. YOUNGER. Thank you.

Mr. BLATNIK. Advertising has changed since then. Now the emphasis is not on the filter but what is on the other end of the cigarette. To try to summarize all of this, what bothers me are these general things, Mr. Chairman.

No. 1, a more concerted effort ought to be made by the industry itself, with all its resources, and by the government agencies that have been derelict in their duty. Our committee criticized the Federal Trade Commission for not preventing fraudulent and misleading advertising. We criticized the Surgeon General for not making available more public information on the health hazards of prolonged and effective smoking.

We criticized the Food and Drug Administration. We criticized the Office of Education for not making more information on smoking available to the youngsters and in high schools and colleges. Because much if not most of the cigarette advertising was aimed at the youngsters on the sound theory that if you get them early they are very likely to stay with you and you have a lifelong customer.

I am not moralizing or preaching about the sins or the moral aspects of smoking. I am a confirmed smoker because I am an addict. I tried to stop and the doctors have warned me to stop because of persistent sore throats and chronic sinus problems and too much talking—which I am doing this morning. I am frank about it. I am hooked and enjoying it.

I am not against smoking. Some smoking is here to stay as drinking is here to stay. But the promotion ought to be placed in the proper perspective. I submit, Mr. Chairman, and members of the committee that the Congress has an obligation to see that these agencies of the Government that are directed by acts of Congress to carry out these particular functions not only carry them out but are given the authority and support and backed by the Congress.

Maybe in its recent ruling the Federal Trade Commission might have used some other wording that could be put on the package instead of "habitual cigarette smoking is injurious to health" but, by the way, that is a fact. I don't say it is the sole cause but since 1957 when the first indications came out and Dr. Hammond was our witness, he showed that the statistical evidence was strong, and it could not be disregarded that prolonged and excessive smoking increased the mathematical incidence of lung cancer.

He didn't go too much into cardiovascular disease and throat cancer and cancer of the larynx. The medical association ignored that. The tobacco industry has a witness who will appear and is scheduled this morning who tried to show that it was meaningless by coming up with figures, and being a junior mathematician myself I do understand figures, that it could be statistically proven that by excessive wearing of nylon stockings, those women are more inclined to have a higher incidence of cancer. That is true.

You will find that most of the women that are wearing nylon stockings are in cities where the habits are more sophisticated, they are smoking more, and getting more runs in the nylon stockings, and in the long run, statistically, it can be proven that those women who wear nylon stockings do get cancer more often. They are also smoking, they are also living in cities.

The cousins in the country that don't wear nylon stockings as often and don't go to as many cocktail parties and don't smoke as much do not have as much cancer. We helped Dr. Hammond begin with the Veterans' Administration to get available pairs in which other things were as equal as possible, age, mentality, psychological things, other physical attributes—they went by pairs—they found no matter where you live, if you are in the city or the country, if you are a heavy and prolonged smoker you will have more chance of cancer than the nonsmoker.

If you are not a heavy smoker, there is less chance. There is less chance. No matter where you showed up with these pairs if you were a habitual and heavy smoker the chances were several times greater that you would get cancer than if you were not a smoker. Since 1957 evidence has accumulated that cigarettes are a cause of cancer—a causative factor in this higher incidence of cancer. We have heard to that effect from the American Cancer Society, the National Cancer Institute, the National Heart Institute, the American Heart Association, the British Medical Research Council, the American Public Health Association, the National Tuberculosis Association, a World Health Organization Study Group, the Royal College of Physicians of London, the Canadian Cancer Society, the Dominion Council of Health of Canada, the Canadian Public Health Association, the American College of Chest Physicians and recently finally from the American Medical Association. The evidence has just piled up and up and up. If I may suggest to the tobacco people, I hope they don't try to brush this off the way they did with the Nilson story several years ago.

I hope they won't come around and say we have to find out exactly what in the cigarette which is not in the cigar or in the pipe may be contributing or a causative factor of cancer and until that is done we shouldn't do anything about it. In the old days before the existence of

microbes was known, before there was a microscope, there were several wells in one of these medieval towns and in a certain part of that town certain people were being seriously ill and dying. One bright guy, who was not a medical man, didn't know about germs, didn't know they existed, didn't know bacteria, had no microscope, plotted a map and he found out that the only people that were sick and who were dying were those who were drinking from only one well.

He assumed there must be something wrong with that well, something harmful, deleterious, or lethal. There was. It was a polluted well that had typhoid. He said shut up the well, use the water from the other wells and not this well.

He didn't say let us wait until further research tells us precisely what is in that water that causes some people to get sick and die. Here is what disturbs me. The tobacco people give a $10 million grant for this research work, and it is about as effective as rapping on that window with a sponge and wondering why the guy down in the street below doesn't hear you.

It might salve your conscience. Perhaps you can say you made an effort to attract his attention. For example, in 1960, just the advertising alone to promote the cigarettes, and primarily the filter type cigarettes, was $236 million, close to a quarter of a billion dollars.

Mr. Chairman, I will conclude with this: We ought to in a firm and fair way support these Government agencies. If agencies exceed their responsibilities we check on them. What bothers me is that in one year it cost half a billion dollars to make a gadget—and I am only talking about a tip—to make it, to promote, to advertise it and then to buy it, including the 2 or 3 cents premium price for this tip. We still don't know what the filter is for.

I asked a medical witness "What could you do with a quarter of a billion dollars or a third of a billion dollars a year in research in cancer?" He said in 6 to 8 years, 10 at the very most we could have the cause and cure of most of the major forms of cancer. I think that type of effort ought to be expended on medical cancer research in all of its aspects, including that related to excessive smoking.

In the meantime I think the dangerous effects of smoking ought to be available. The adults should know the dangers and make up their own minds. If they want to smoke, as I do, in spite of their knowledge, that is their right.

Certainly efforts ought to be made to avoid excessive advertising directed toward youngsters. More information should be made available to young people about the dangers of smoking. This is not only a habit, it is a mild addiction. A doctor can tell you to cut off butter because of the high cholesterol or starches in the forms of potatoes or white bread and you will do it like the snap of a finger.

If a doctor tells you to stop smoking, it is a more difficult problem. With these statements I appreciate your indulgence and the generosity of the time given me.

Mr. FRIEDEL (presiding). Thank you very much.

Mr. SPRINGER. I have just one comment. May I say to my distinguished colleague he certainly made a very learned dissertation of his experience in this field. I notice in your bill, H.R. 9655, on page 1, you use the words:

in the light of the conclusive evidence that cigarette smoking is injurious to health and constitutes grave threats to the public welfare.

Is it your thought that these five reports which have been gone over by the Surgeon General, that this is the conclusive evidence which you are talking about?

Mr. BLATNIK. Yes. I will agree with you there is room for argument on conclusive, but there is grave evidence that cigarete smoking is injurious to health and the Surgeon General's Advisory Committee stated in capital letters "EXCESSIVE AND PROLONGED SMOKING CONSTITUTES A GRAVE THREAT TO HEALTH." Let me get the wording more exact. The Surgeon General's Committee report states "CIGARETTE SMOKING IS A HEALTH HAZARD OF SUFFICIENT IMPORTANCE IN THE UNITED STATES TO WARRANT APPROPRIATE REMEDIAL ACTION."

Mr. SPRINGER. This was the only part of your bill that disturbed me a little bit. May I say to my distinguished colleague I am not going to be particularly impressed by what the tobacco industry says. I am going to go into it with as open a mind as I can but I understand that the industry has an interest to protect.

We have had here two witnesses in the last hearing, most distinguished witnesses, one the head of the U.S. Public Health Hospital in Boston, one of the outstanding heart men in the area, another from Barnes Hospital, which is one of the finest hospitals in the Midwest, of a man who had performed over 4,000 chest operations and a specialist only in this field. At least he has seen 4,000 cases which he operated on.

Out of those two, I came to the conclusion, first of all, that it not known yet what causes this change in the mechanism of the cell. That is just not known, period. It was this cancer expert's theory that most of the scientists agreed there is a trigger mechanism and they have reduced it probably to a virus. I had not understood until his testimony that the virus came from the outside. I was always under the impression that the virus was in your system.

But apparently since it is agreed that the virus does come from outside the system and comes into the system and somehow or other that probably, is the best they can say, is the trigger mechanism. As to what causes cancer, whether this is just one virus or maybe a half dozen viruses they don't even know at this point.

There were the startling statistics that in England the cancer of the chest is twice as prevalent as here. This raises an immediate question as to whether there is another cause—another causative agent which is working because the rate of consumption in this country is much, much greater than in England. I am trying to keep my mind open. I questioned quite closely the surgeon from Barnes with reference to this matter. It was the feeling of these two distinguished people, one in the medical field and one in the scientific field, both practical men and I am sure not related to the tobacco industry in any way, there was a serious question whether or not all of these conclusions which have been come to were far to conclusive.

They could not deny the facts of the research, but the conclusions that were drawn as to the causative agent of tobacco was by the report far more conclusive than they could come to because it was still a mystery to them what caused it. Even this man who was watching it couldn't come to a conclusion except they were agreed that there was a trigger mechanism probably caused by virus introduced into the body.

Mr. BLATNIK. This is what causes great distress to me. They have in spent 7 years from the date of my committee hearings billions of dollars on advertising cigarettes. If we had spent it on cancer research we would have known a lot more than we do now. That is where the energy should have been directed.

Mr. FRIEDEL. Thank you very much.

Our next witness will be our colleague, Congressman Lennon.

STATEMENT OF HON. ALTON LENNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. LENNON. I will stay within the confines of my short prepared statement.

Mr. Chairman and members of the committee, I should like to offer to the committee two basic conclusions which I believe should be controlling in the area of tobacco and health:

First, in view of the wide-ranging social and economic interests in questions of tobacco and health, it should be the Congress that determines policy and not a Federal agency.

Second, the policies and programs determined by Congress for so important a national question should be applicable throughout the country and not encumbered or frustrated by a diversity of local action.

As to the first, Mr. Chairman, it is clear that this issue relates not only to the problem of smoking and health, but to the individual citizen's determination whether and how much to smoke. The decisions in this connection are of vital concern to the tobacco growers, to the millions of our citizens concerned in the manufacture and distribution of tobacco products, and to both Federal and State revenues.

Congress, and Congress alone, should determine how these important national issues should be resolved. As further information develops Congress alone should determine what additional changes may be needed. It is not the responsibility or scope of authority of any administrative agency or department of the Federal Government to do so.

I was shocked when less than a week after the report of the Surgeon General's Advisory Committee was issued, the Federal Trade Commission moved in with an unprecedented set of proposed trade regulation rules which were not only premature but plainly unauthorized. I say premature because when the Surgeon General set up the Advisory Committee, it was clearly understood their report was to be phase I in dealing with the problem.

Everyone who read the report of the Advisory Committee of the Surgeon General on Smoking and Health knows that is so. Everyone knows that the Federal Trade Commission participated in that original conference and agreed to the establishment of phase II. There was to be a phase II in which all concerned would examine all of the questions in the light of the report and make recommendations as to what should be done.

I have studied the legislative authority of the Federal Trade Commission and the Administrative Procedure Act which Congress in 1946 provided to prevent this very type of abuse of statutory power by administrative agencies.

I am satisfied that when this committee examines these qusetions, it also must conclude that what the Commission has done—for the first time in the 50 years since it was created by Congress—is not authorized by law. It is a usurption of the congressional power to legislate.

The Federal Trade Commission, I feel, has acted in plain violation of the fundamental rules of due process, as well as the requirements of the Administrative Procedure Act. It can hardly be due process to make administrative determinations without having sworn testimony, or the opportunity to cross-examine witnesses. These fundamental rights were not honored before the Commission last March.

Despite that, the Commission told me at its hearing that it has the power to act where it can "make a finding based upon competent, reliable, probative, relevant evidence" (Commission proceeding, p. 403). It did not proceed to get that kind of evidence.

I mention these facts because they underscore my point that Congress, and Congress alone, should deal with this problem.

My second conclusion is plainly based on commonsense.

In a program of such wide concern to so many segments, it would make little sense, and contribute nothing except chaotic confusion for each State and city to write its own rules about the labeling of tobacco products. Such action would create an impossible situation for the production and distribution of cigarettes and other tobacco products. The determinations of Congress should prevail.

This is not a question of the Federal Government attempting to invade the rights and authority of any State. When it comes to protecting the interstate movement and sale of marketed products, Congress has often exercised authority to prevent unnecessary interstate barriers. There are many precedents for this view.

In my opinion a caution label for tobacco products is not necessary. The need has not yet been conclusively established. Certainly, the public is actuely aware of the charge that smoking may be injurious to health, and the issue will undoubtedly receive continuing publicity.

However, should this committee determine that legislative action is desirable in the tobacco-health area, I hope it will also provide that the rules and requirements which may be enacted by the Congress are to preempt the field.

Mr. FRIEDEL. Thank you.

Our next witness will be our colleague, Congressman Henderson, of North Carolina.

STATEMENT OF HON. DAVID N. HENDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. HENDERSON. Mr. Chairman, members of the Committee, let me thank you for the opportunity to appear.

With your permission, I will ask that the full statement be inserted and I will not read it all.

(Statement referred to follows:)

STATEMENT OF HON. DAVID N. HENDERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I appreciate the opportunity to appear before this committee to testify on this matter of vital importance to my State and congressional district.

Nobody is against health. Nobody is in favor of haphazard labeling or indiscriminate selling of products such as poisons, narcotics or other drugs, explosives, or inflammatory materials.

The Food and Drug Administration very properly has jurisdiction over labeling and sale of inherently dangerous products classified as food and drugs.

The Federal Trade Commission has no jurisdiction whatever in the field of public health. Its basic jurisdiction is limited to exactly what its name implies—trade and commerce. It can and does promulgate regulations of a negative nature which prohibit false and misleading advertising and commercial practices.

If the cigarette manufacturers were making false and misleading statements in their labels or advertising there is no doubt in my mind that the Federal Trade Commission could and should prohibit such statements.

An affirmative requirement that the manufacturer of cigarettes place on their packages a statement that this product is known to be injurious to health and may produce cancer and other diseases is quite another matter. I am confident that the courts will rule that the Federal Trade Commission has no such authority.

I do not believe the Department of Health, Education, and Welfare needs additional jurisdiction in the field of tobacco labeling, either.

A frank appraisal of the situation forces us to admit that the reason FTC, HEW, this committee, and the Federal Government as a whole is having so much difficulty with this situation is that it has not yet been established by scientific evidence as distinguished from misleading statistical data that moderate cigarette smoking can or does cause cancer and other diseases.

Therein lies the real question. We all know that almost anything improperly used or used to excess can be harmful. The question at issue here is whether it has been established that any use of cigarettes is harmful; and a cold, unemotional appraisal of the situation leads to only one conclusion and that conclusion is that this has not been established.

Lung cancer is still a rare disease in this country despite the millions of persons who smoke cigarettes. There are many, many diseases which kill far more people, and many smokers live to a ripe old age and are run down by automobiles.

Nothing is more important than the health of our Nation, but before we take action as serious and as far reaching as requiring that the word "cancer" be put on cigarette packages, the case should be proved by evidence rather than implication.

Not only does the production of leaf tobacco and its processing and manufacture into cigarettes constitute the source of livelihood for thousands of people in North Carolina and the other tobacco-producing States, but tobacco also produces Federal revenues the loss of which would require drastic changes in our tax laws.

The labeling of cigarettes as inherently dangerous in any amount and regardless of the degree of use is a step of such far reaching implications that it should not be taken as a result of the inconclusive circumstantial evidence we have to date.

Those of us closest to the program have consistently contended and still contend that we need a crash program of research to determine whether there is actual demonstrable proof that cigarette smoking contributes to lung cancer and other diseases and if so, what steps can be taken to remove harmful agents from the cigarettes. In the meantime, indiscriminate labeling is neither justified nor proper.

Mr. HENDERSON. I would like to get to the crux of the matter. I point out that a frank appraisal of the situation forces us to admit that the reason the Federal Trade Commission, HEW, and this committee and the Federal Government as a whole is having so much difficulty with their situation is that it has not yet been established by scientific evidence as distinguished from misleading statistical data that moderate cigarette smoking can or does cause cancer and other diseases. Therein lies the real question. We all know that almost anything improperly used or used to excess can be harmful.

The question at issue here is whether it has been established that any use of cigarettes is harmful, and a cold, unemotional appraisal of the

situation leads to only one conclusion and that conclusion is that this has not been established.

Lung cancer is still a rare disease in this country despite the millions of persons who smoke cigarettes. There are many, many diseases which kill far more people, and many smokers live to a ripe old age and are run down by automobiles. Nothing is more important than the health of our Nation, but if we have to take action as serious and as far reaching as requiring that the word "cancer" be put on cigarette packages, the case should be proved by evidence rather than implication. Not only does the production of leaf tobacco and its processing and manufacture into cigarettes constitute the source of livelihood for thousands of people in our State of North Carolina and other tobacco-producing States, but tobacco also produces Federal revenues, the loss of which would require drastic changes in our tax laws.

The labeling of cigarettes as inherently dangerous in any amount and regardless of the degree of use is a step of such far-reaching implications that it should not be taken as a result of the inconclusive circumstantial evidence we have to date.

Those of us closest to the program have consistently contended and still contend that we need a crash program of research to determine whether there is actual demonstrable proof that cigarette smoking contributes to lung cancer and other diseases and if so, what steps can be taken to remove harmful agents from the cigarettes. In the meantime, it is our contention, indiscriminate labeling is neither justified nor proper.

I thank you very much for the opportunity to appear before you.

Mr. SPRINGER. Mr. Henderson, would you have any objections to the labeling of packages of cigarettes if it can be scientifically established that there is a causal relation between tobacco and cancer? Your main statement is devoted to the fact that this is statistical only. This is the point raised by almost all of our expert witnesses so far. They have been questioned quite seriously on statistics.

I repeat the question. Would you have any hesitation in endorsing that kind of a legislative program if it should be shown that there is a causative relation scientifically?

Mr. HENDERSON. Let me say to my distinguished colleague that I gave a great deal of consideration in preparing this statement and say to the committee that if we could agree on just what has been determined to date, I do not think I would have any hesitancy of putting a factual label on. But I think if we did, it would have to be so long or hedged that I, at least, could not come up with a suggestion to this committee as to what should be placed on it.

If we had conclusive evidence that smoking in excess would do certain things, I certainly would not oppose a label that we would find would be helpful.

Let me say this: The very fact that we are here before a congressional committee on this problem is a great satisfaction to me. I think the thing that has shocked us the most is the action taken by the Federal Trade Commission while these hearings were going on. As one who represents an area that produces tobacco, we know that the very livelihood of our people is in the hands of those making these decisions and I feel quite confident that I can speak for my tobacco farmers that they would be satisfied with the action that this

committee or any proper committee of the Congress would take in this field.

But the impact of the Federal Trade Commission in what we feel was very hasty action is most disturbing to us.

Mr. FRIEDEL. Thank you very much.

Mr. HENDERSON. Thank you, sir.

Mr. FRIEDEL. The next witness is another colleague from North Carolina, the Honorable Ralph J. Scott. Mr. Scott, we will be glad to hear you at this time.

STATEMENT OF HON. RALPH J. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. SCOTT. Mr. Chairman, and distinguished members of the committee, at the outset, let me say that I would not be understood as placing the economics of tobacco ahead of the health of our people. Health considerations should and must receive top priority in any evaluation of the effects, if any, of smoking upon health. But I must point out that the tobacco industry, including production, manufacture, and distribution, is of high economic importance in North Carolina. In fact, it might be said that the economic structure of our State is based upon the tobacco industry. In North Carolina alone there are more than 165,000 farm families, one-ninth of the State's population, who earn their livelihood wholly or in part from tobacco. Tobacco is grown in 86 of North Carolina's 100 counties, and more than $500 million worth of tobacco is marketed in my State each year.

The production and manufacture of tobacco and tobacco products provides jobs for approximately 40,000 people in our State and generates annual payrolls of more than $156 million. Manufacturers have more than $360 million invested in plants in my State alone. So, Mr. Chairman, and distinguished members of the committee, you can easily see the importance of tobacco and tobacco products to my State.

The report of the Advisory Committee to the Surgeon General of the United States supposedly gave rise to the recent ruling of the Federal Trade Commission requiring that a warning notice be placed on all cigarette packages and in all cigarette advertising to the effect that cigarette smoking is detrimental to the health and in particular might cause lung cancer or even other diseases. In turn, the report of the Advisory Committee and the ruling of the Federal Trade Commission in this connection has given rise to the issues now pending before your committee.

Since childhood, for more than 50 years, I have heard, as have many of you, a variety of theories about the effect of smoking on health. We have been told for the past 50 years or more, to my knowledge, that smoking would cause heart trouble, shortness of breath, stunted growth, and that it would even affect one's complexion. These theories have been bruited about for half a century and more, but the proof has not yet been presented.

The mystery surrounding the cause or causes of the many types of cancer has in more recent years brought suspicion upon tobacco. If this suspicion is well founded in whole or in part, we wish to know it. If it is only a "bear in the woods" scare, we want to know that, too. We want to know (1) whether the use of tobacco is a hazard to

health; (2) the areas and extent of any such hazards; and (3) if tobacco is in fact a hazard to health, we want to know what, if anything, can be done in the production and manufacturing process to reduce and eliminate the harmful factors. The only way we can do this is through intensive research on a broad scale. This has been undertaken and is now underway. Nearly $20 million has been either spent or pledged by the tobacco industry to the cause of impartial research into the possible effects of smoking upon health.

In the opinion of many experts there is serious doubt, and actually disbelief on the part of some, that smoking has any harmful effect whatever upon health. There are wide differences of opinion among those experts who hold that smoking has an adverse effect upon health. Notwithstanding the fact that all of these differences of opinion prevail among the many experts who have given study to the question, the Federal Trade Commission has set itself up as judge, jury, and official executioner, so to speak, over the fate and fortunes of one of our country's most profitable industries.

The ruling of the Federal Trade Commission would seem to assume that the public is not aware of the alleged hazards of smoking. This assumption is ridiculous, because for the past 10 years or more practically every newspaper and magazine in the country has with steady regularity publicized the opinions and findings of dozens of factfinding boards, commissions, and experts of varying stature. I dare say there is not a man, woman, or child in the United States who is not fully aware of the alleged ill effects of smoking upon health. There are numbers of products in everyday use which may be bought over the counters of our drugstores and other mercantile establishments which are potentially more dangerous to health than cigarettes. And if the Federal Trade Commission acts consistently, it will be only a matter of time until the skull and crossbones will appear on a large number of such products.

In view of the wide differences of opinion among experts as to the effect of smoking upon health, and the economic dependence of thousands and thousands of our people upon the production, manufacture and distribution of tobacco, I strongly feel that the Federal Trade Commission should be put upon notice that it cannot by a single stroke of the pen threaten the life of an industry which is the lifeblood of many of our States, as well as a vital part of our national economy, on assumptions regarding which there is so much doubt and such diversity of opinion.

It is my strong feeling that cigarettes should not be labeled in any of the ways suggested, and that cigarette advertising should be governed by the rules set forth in the cigarette advertising code. Any action taken with respect to the labeling of cigarettes or regulation of cigarette advertising should be left to the discretion of the Congress.

Thank you, Mr. Chairman, for the opportunity and privilege of appearing before your distinguished committee.

Mr. FRIEDEL. Are there any questions? If not, we thank you for your testimony, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Dr. Wendell G. Scott, president of the American Cancer Society.

STATEMENT OF DR. WENDELL G. SCOTT, PRESIDENT, AMERICAN CANCER SOCIETY; ACCOMPANIED BY CLIFTON R. READ, VICE PRESIDENT, AMERICAN CANCER SOCIETY'S PUBLIC EDUCATION AND INFORMATION DEPARTMENT; AND LAWRENCE GARFINKEL, MEDICAL AFFAIRS DEPARTMENT

Dr. SCOTT. Mr. Chairman, members of the committee, I am Dr. Wendell G. Scott. I am here as president of the American Cancer Society. I am a radiologist in private practice and also professor of clinical radiology at the Washington University of Medicine in St. Louis.

Since 1946 I have been consultant in radiology to the Surgeon General of the U.S. Navy and Chairman of the Committee on Radiology of the National Research Council.

With me are Mr. Clifton R. Read, vice president of the American Cancer Society's public education and information department, and Mr. Lawrence Garfinkel of the medical affairs department. They are here to provide any additional information or to help answer any questions you may have.

The American Cancer Society is a voluntary organization concerned with all aspects of cancer—research to find the causes; education for the public about cancer; dissemination of information about new methods of diagnosis and treatment for the medical and allied professions; and providing service to help meet the needs of cancer patients and their families.

The American Cancer Society is composed of over 2 million volunteers organized into 59 divisions composed of 3,000 units throughout the United States.

In 1954, the American Cancer Society completed the first large epidemiological study that pointed out the causal relationship between cigarette smoking and lung cancer. A number of other studies, here and abroad, confirmed this relationship and served as the basis for the report of the Advisory Committee on Smoking and Health to the Surgeon General of the US. Public Health Service which was released in January 1964.

This report established beyond any doubt the causative relationship between cigarette smoking and certain types of cancer—particularly of the lung—and an association with other disabling and frequent fatal diseases such as cornoary heart disease, and chronic bronchitis, emphysem, and peptic ulcer.

Since 1954, the society has been the leader in developing education programs for warning the public of the health hazards from cigarette smoking.

I would like to emphasize at this time that the American Cancer Society is not an antitobacco society. It is a cancer society. Unfortunately, only a few people and not enough physicians realize the extent and seriousness of the damage to health caused by cigarette smoking. It causes at least 100 deaths a day from cancer of the lung in this country and over 500 deaths a day from other diseases; 50 percent more hospitalization for heavy cigarette smokers than for nonsmokers, and a death rate for heavy smokers that is almost double that for nonsmokers among men 35 to 65 years of ago, at the peak of their careers and family responsibilities.

A report from the National Institutes of Health indicates that the harmful effects from smoking are beginning to appear in women and that cancer of the lung is now 10 times more frequent in women who smoke than in women who do not smoke.

We are also beginning to realize that cancer of the lung is largely a preventable disease. Dr. Auerbach and his associates have presented convincing evidence that only the rare adenocarcinoma of the lung is not connected with smoking. All other cancers of the lung are connected with smoking. As Dr. Alton Oschner has said, "It is the manmade smog of cigarette smoking which is responsible for cancer of the lung."

Two events of significant importance occurred last week which can be major steps in the control of cigarette smoking. First, was the announcement before this committee that the Federal Trade Commission would require that cigarette packages and cigarette advertising carry a warning label that the product can be a serious health hazard.

Second, was the action by the American Medical Association in clarifying and in emphasizing their position in unequivocal terms, and I quote, "that cigarette smoking is a serious health hazard."

The American Cancer Society has always maintained that the individual must make his own decision as to whether to smoke or not to smoke. The society has never advocated any kind of prohibitive legislation against cigarettes as a health safeguard.

The American Cancer Society believes in the American free enterprise system, and in the right of an industry to govern itself for the benefit of mankind. But the industry must make this self-evident, or submit to Government control. We are heartened by the recent steps that have been taken in this direction by the advertising media and the tobacco industry to develop an advertising code and the appointment of Gov. Robert B. Meyner as the advertising czar.

The American Cancer Society has, however, just as firmly maintained that the individual must have complete and accurate information about the health hazards of cigarette smoking in order that he can make an intelligent decision.

One way to help do this is for cigarette packages to carry a clear warning that cigarette smoking is a major cause of lung cancer and certain other serious diseases. The American Cancer Society supports the proposals of the Federal Trade Commission on this subject, including the provision for labeling cigarette packages with the tar and nicotine content of the mainstream smoke. While many smokers will ignore such warnings and labeling, nevertheless, this information will remind the beginner that he is exposing himself to a habit-forming practice that can be a major hazard to his health.

The seriousness of the problem is demonstrated by a recent estimate that about 4,500 young people between 12 and 17 years of age start smoking every day, and the American Public Health Association tells us that about 1 million children in school will eventually die of lung cancer if present trends continue.

In testifying before the Federal Trade Commission, I stated that—

the advertising themes which built the cigarette industry were developed before we had the evidence that cigarette smoking tends to shorten life, or that it can cause lung cancer. Now that the evidence is established, we think the time has

come to change, to modify and to restrict the alluring and tempting advertisements to entice our young people to smoke.

We feel that the major responsibility for modifying advertising themes and for protecting the public rests with the communications media, the advertising business, the cigarette industry, the U.S. Public Health Service and other affected Federal agencies, including the Federal Trade Commission, and that they should work this out on a cooperative basis with the proper guidelines.

It would be a serious setback should there develop a governmental jurisdictional dispute as to the agency that should exercise any Federal controls. All agencies should work together to achieve the quickest and best result.

However, the American Cancer Society also believes that a responsible Government agency, such as the Food and Drug Administration, could also safeguard the public health by supervising the marketing of tobacco products as it currently supervises foods, drugs, and other products for human consumption. Should it be decided that the Food and Drug Administration is the agency to do this, we would give them our full support.

On the other hand, it might be better to have both the Federal Trade Commission and the Food and Drug Administration develop cooperative programs.

The essential point is that the damage to health caused by cigarette smoking will be a continuing one, and the society believes that the appropriate Government agency or agencies should be given the continuing responsibility for supervising it.

At the same time, the society has taken a clear position in favor of research on the development of cigarettes which will be less damaging to health. It recognizes that, in spite of educational methods, labeling, and Government supervision of marketing cigarettes, millions of habitual smokers will continue the habit. Reducing health hazards in smoking for such people is, therefore, desirable public health measure.

The society believes that the National Institutes of Health together with voluntary health agencies and organized medicine are an excellent position to conduct and support studies to identify the harmful substances in cigarette smoke, so that these may be reduced or eliminated.

To conclude: We believe in the freedom of the individual in the matter of cigarette smoking. We are opposed to legislation that would prohibit the smoking of cigarettes.

Yet we recognize and point out to you that the reduction of cigarette smoking offers greater possibilities than any other available medical or public health measure for the prevention of cancer, of serious illness, of physical disability, of suffering and of premature death in this country—an astounding statement, but true.

To achieve our goal, we rely on persuasion and public and professional education in which we feel the Government must play an important role. We have not tried to comment on each of the bills which your committee is considering, since we feel that this will be determined by you.

If the executive branch has the authority on the basis of Federal statutes now in existence to issue regulations with the force of law which are necessary to protect the health of our people in this matter, we would not recommend new legislation.

If the Congress, and especially the Interstate and Foreign Commerce Committee of the House of Representatives feel that legislation is necessary to carry out the purposes we advocate, then we would support such legislation.

Mr. O'BRIEN (presiding). Thank you, Dr. Scott, for an excellent statement. I assume your organization has done research in other fields than cigarette smoking into the causes of cancer or death from other diseases; is that correct?

Dr. SCOTT. Primarily in the field of cancer, sir; yes, sir.

Mr. O'BRIEN. You say that cigarette smoking causes at least a hundred deaths a day from cancer of the lung and over 500 deaths a day from other diseases; 50 percent more hospitalization for heavy cigarette smokers than for nonsmokers.

Would it be an accurate statement to say that there would also be 50 percent more hospitalization for heavy drinkers than for nondrinkers?

Dr. SCOTT. This I would say would be a reasonable statement; yes, sir.

Mr. O'BRIEN. Also 50 percent more hospitalization for heavy eaters than for light eaters?

Dr. SCOTT. I would presume so; yes, sir. We have no statistics or epidemiological or experimental studies or pathological studies to back up the statement as we have with relation to tobacco.

Mr. O'BRIEN. You do not enter into the question of whether the Federal Trade Commission had the legal right to take the action that it proposes to take?

Dr. SCOTT. No, sir; I am not competent in that field, sir.

Mr. O'BRIEN. As a matter of curiosity, your refernce to the alluring and tempting advertisement to entice our young people to smoke, has it been your experience or do your studies indicate that a higher percentage of young people take up smoking than in the past?

Dr. SCOTT. No, sir. The recent study by Gilbert & Associates shows in the last 5 years there has been about a 6-percent decrease in the number of young people that have taken up cigarette smoking, sir.

Mr. O'BRIEN. That would indicate that this advertising is perhaps not as alluring and tempting as might be indicated.

Dr. SCOTT. No. I would say exactly the contrary, sir. Because the only efforts that have been made to discourage the younger people to smoke have been those made by organizations similar to ours in which our budget in this field has been approximately $100,000 a year as compared to which I believe I heard this morning a statement of $230 million to influence them to smoke.

Mr. O'BRIEN. You say you are opposed to legislation that would prohibit the smoking of cigarettes?

Dr. SCOTT. Yes, sir.

Mr. O'BRIEN. I assume that one of the reasons for that is that if there was such a prohibition it would merely force the people back to the corn silk and dry rose leaves. It would not stop people from smoking.

Dr. SCOTT. No, sir. There would be the black market and all other kinds of undesirable practices. We believe the basis for reducing the cigarette smoking and encouraging young people not to smoke is through an intelligent straightforward, honest documentation of

facts. This is an educational program which they will appreciate and value and can then exercise their own judgment.

Mr. O'BRIEN. Thank you very much.

Mr. Younger?

Mr. YOUNGER. Thank you, Mr. Chairman.

Dr. Scott, do you know Dr. Thomas H. Burford?

Dr. SCOTT. Yes, sir; Dr. Burford is one of my close friends and associates. I work with him almost every day of the year.

Mr. YOUNGER. Do you think he is a competent witness?

Dr. SCOTT. Indeed he is. He is one of the most respected thoracic surgeons in the United States.

Mr. YOUNGER. Then how do you account for the fact that he makes the statement: "I have seen and treated over 4,000 cases of lung cancer in this period. I am not a cancer researcher and I am not a statistican. My opinions are based on clinical experience and a thorough study of the scientific literature pretaining to lung cancer. On objective evaluation of published research and statistical studies," and he says there is no relationship between smoking and lung cancer.

Dr. SCOTT. I am aware of his statement. He has felt this way from the very beginning. When Dr. Ernest Winder came to him to undertake the first studies, Dr. Burford did not feel there was any merit in studying the relationship between smoking and lung cancer. Dr. Winder then went to Evarts Graham, the professor in charge of the department, and he said, "All right, we will go ahead with the studies." This is Dr. Burford's personal opinion. It is not supported by a series of scientific studies and investigations. An opinion to which he is perfectly entitled but with which I disagree, sir.

Mr. YOUNGER. I can't understand how he can differ so much with the other reports. Do you know Dr. Henry Russek?

Dr. SCOTT. No, sir.

Mr. YOUNGER. Former Director of Cardiovascular Research of Public Health. Do you know Dr. Hiram Langston?

Dr. SCOTT. No, sir.

Mr. YOUNGER. He is another doctor that has had a world of experience in this field.

Dr. SCOTT. Sir, did they submit any scientific experiments or scientific reports to refute the evidence that there is a serious health hazard between cigarette smoking and lung cancer?

Mr. YOUNGER. Have you read their statements?

Dr. SCOTT. No, sir; I have only read what was reported in the newspapers about them.

Mr. YOUNGER. These statements are all in and they are complete. I would suggest that they be read. I do not see how you can reconcile the statements of these doctors who are apparently eminent in their fields with the statement that you make. There may be some correlation. I do not know.

Dr. SCOTT. My statements are based on the reports of the people who have made epidemiological studies of hundreds of thousands of smokers.

Mr. YOUNGER. These are the same people with similar experience.

Dr. SCOTT. They have not made any individual studies or reported or at least I have not seen them in the literature. I should say that. I can't be specific about anyone but Dr. Burford's bibliography. This

I am fairly well acquainted with. But the most important studies and the evidence of the scientific bodies in the United States support the statements of the Surgeon General's Advisory Committee on Health, and so does the American Medical Association. It was said today that this was a little belated statement on the part of the American Medical Association but I would like to call to your attention that this is the first meeting the American Medical Association has had since the publication of the Surgeon General's Committee on Tobacco and Health.

Mr. YOUNGER. This same point was emphasized by the chairman. I am sorry he is not here because he was called to another meeting. He brought out the other day that if the statement such as you make here on page 5:

> Yet we recognize and point out to you that the reduction of cigarette smoking offers greater possibilities than any other available medical or public health measure for the prevention of cancer, of serious illness, and physical disability, of suffering, and of premature death in this country, an astounding statement, but true—

If that is true, then we are all derelict in not passing a bill prohibiting the smoking of cigarettes.

I do not see how you can get away from the fact that if this statement is true how the statement above "that we are opposed to legislation that would prohibit smoking" can be substantiated.

Dr. SCOTT. Because it couldn't be done, sir, any more than you could prohibit alcoholic consumption. This is a much wider habit. It involves many more millions of people. This was a significant experiment but it was a failure and we do not want to repeat it with tobacco.

Mr. YOUNGER. That is all.

Mr. O'BRIEN. Mr. Kornegay?

Mr. KORNEGAY. Thank you, Mr. Chairman.

Dr. Scott, I am afraid that time will not permit me to ask you the many, many questions which I could and which to my mind arise from your statement. They have come out several times during the course of the hearing.

I would like to ask you to what extent is the American Cancer Society putting on a campaign of education about the hazards of cigarette smoking?

Dr. SCOTT. Mr. Read is vice president in charge of public education and information and I will ask him to answer your question, sir.

Mr. READ. Yes, sir. We have a rather extensive program aimed almost entirely at teenagers, to try to persuade them either if they smoke to stop smoking or, if they do not smoke, not to smoke. We have films, filmstrips—material that, as nearly as we can determine, is in use in about half of the high schools and junior high schools of the country.

Mr. KORNEGAY. Are you familiar with the advertising code which was recently promulgated by the cigarette industry?

Mr. READ. Yes, sir.

Mr. KORNEGAY. Do you think, sir, that will go a long way toward correcting the problems in the young smokers in the same area that you and the American Cancer Society are aiming your program?

Mr. READ. My impression is that it will be very helpful and it was a very sound step forward. We really can't tell how it will work until we see it in action. I think this is a problem that is going to take a long time. There must be many, many approaches. No one idea, media, or theme is going to persuade people to give up this very deeply entrenched habit. It will take a real crystalization of public opinion.

I think things are moving in a way that are very encouraging at the present time.

Mr. KORNEGAY. Thank you.

Mr. O'BRIEN. Mr. Curtain?

Mr. CURTAIN. Thank you, Mr. Chairman.

Dr. Scott, in your opinion, is it the inhalation of smoke that is the factor that is injurious to health?

Dr. SCOTT. Yes, sir; this is the most important thing about it.

Mr. CURTAIN. Is that restricted to cigarette smoke or could it be the smoke of any product?

Dr. SCOTT. It is largely restricted to cigarette smoking because the smoke from cigarettes is neutral and it is not irritating and most people can draw it into their lungs without an extremely unpleasant sensation; in fact, it becomes a pleasant sensation in time.

Now you take smoke from cigars and pipes: this smoke is alkaline; it is very irritating; and only a very small number of people are capable of inhaling smoke from cigars and pipes. This is why the pipe-and-cigar smokers have a much lower incidence of cancer of the lung.

Mr. CURTIN. You have gotten into the next question I was going to ask you. Is the smoke from cigars equally as injurious to the lungs if inhaled?

Dr. SCOTT. We would say it is; yes, sir.

Mr. CURTIN. The question came up a few minutes ago about corn silk. Is the smoke from corn silk injurious to the lungs if inhaled?

Dr. SCOTT. I would presume it is but I have never seen any studies on it.

Mr. CURTIN. That I can understand. Is the chewing of tobacco injurious to the health?

Dr. SCOTT. Yes, indeed. It is injurious largely because the habitual tobacco chewer will keep the wad of tobacco usually in one place in his mouth, between his cheek and the ridge of his teeth. The local irritation there will cause cancer in a high number of patients or people who do it.

Mr. CURTIN. Is that because it is tobacco which is so held, or is it because it is a lump held in that spot of the mouth?

Dr. SCOTT. I think it is largely related to tobacco because many children and other people in the country now are habitual gumchewers. No other product has been related to the development of cancer at a local site other than tobacco. In the Far East, of course, there is the betel nut, which is mixed with tobacco, as a rule, and held in one place. This does cause a definite increase in the incidence of cancer of the mouth.

Mr. CURTIN. You have made studies on the injurious effects of chewing tobacco?

Dr. SCOTT. Yes; these have been reported, sir.

Mr. CURTIN. How about snuff, which, I believe, is inhaled as one method of using it. Is that injurious to health, too?

Dr. SCOTT. I am sure it is but I am not in a position to make a positive statement of it, sir. I have not studied this. Perhaps Mr. Garfinkel can give you some information on that.

Mr. GARFINKEL. Sir, you may be aware that the American Cancer Society is now conducting a study of over a million people in this country. We obtained questionnaires not only on smoking but many other factors in 1959 and every year our volunteers report whether they are alive or dead and we study the mortality rates.

We have published one paper on the effects of smoking on nearly half a million men. As part of this study, we have studied the distribution of smoking habits and tobacco use of various kinds. No one has really made a definite study of chewing tobacco and snuff. There have been some reports on the high incidence of mouth cancer connected with chewing tobacco. As far as I know, nobody has made a report on snuff mainly because it is not a common habit.

In our study we have only 3 percent of the men, which covers 25 States, who are snuff and tobacco users as opposed to nearly 70 percent who are cigarette smokers. We hope, at the conclusion of this study, we may have some information of mortality rates in relation to chewing tobacco and snuff but that will not be published for at least 3 or 4 years.

Mr. CURTIN. Then are these the conclusions at which you have arrived: There is something in the tobacco leaf that is injurious to health, in addition to the inhalation of smoke, which inhalation, you say, is injurious to the lungs, regardless of the product being smoked; is that correct?

Dr. SCOTT. Yes; this is true.

Mr. CURTIN. If you know, what is the element or ingredient in the tobacco leaf that causes cancer?

Dr. SCOTT. We certainly wish we knew, Mr. Curtin. That is why we are spending hundreds of thousands of dollars to find out if we can. If we can identify it, then we can determine how it can be removed.

Mr. CURTIN. So you are, at this time, in no position to say whether or not this cancer-producing factor is peculiar to the tobacco leaf or whether it is in some types of food also?

Dr. SCOTT. No one smokes other types of foods, particularly.

Mr. CURTIN. They chew and swallow food.

Dr. SCOTT. Yes. The Food and Drug Administration pretty well labels all of the things that we consume and foods. They are very particular about chemicals that are added and coloring matter and preservatives and things like this because there are some of these which are highly suspicious, at least, of being capable of inducing cancers.

Mr. CURTIN. Then does it not all boil down to the fact that you feel quite sure that there is something in the tobacco leaf that causes cancer but you are not sure what it is?

Dr. SCOTT. This is absolutely right, just like it is with other types of cancer. We can't tell you the cause but we can tell you how to prevent a good many.

Mr. CURTIN. You also feel that the inhalation of smoke, regardless of what product is being burned, causes lung cancer?

Dr. SCOTT. We haven't any specific pathological or epidemiological or experimental evidence that this is absolutely true, which we have with tobacco.

Mr. CURTIN. That is all. Thank you, Mr. Chairman.

Mr. O'BRIEN. Mr. Van Deerlin?

Mr. VAN DEERLIN. Dr. Scott, your statement has left it to the individual to make his choice whether to smoke or not to smoke. You have stopped short of urging Government warnings in connection with advertising of cigarette smoking.

Dr. SCOTT. No, Mr. Van Deerlin, we have not stopped short. We included that the warning should be applied to advertising statements and to cigarette packages.

Mr. VAN DEERLIN. I find it on labeling. I do not find it in regard to advertising.

Dr. SCOTT. It is in my statement here. If you want me to I will look through it and read it to you. On page 3 it does not actually say so but I thought in here I did have a statement.

Mr. VAN DEERLIN. It seems to me you suggested the desirability of restraint in advertising and you have indicated that under Governor Meyner's leadership the industry is moving in that direction.

I sense from your statement that you were content to leave that phase of the regulation to the steps that industry itself might take.

Dr. SCOTT. We would much prefer to see the industry police itself. We believe in that principle. But if they do not do it, then we feel that governmental control would become necessary or is necessary. I say we do support the proposals of the Federal Trade Commission on page 3, and this would include their recommendations concerning advertising.

We think there should be some warning in that, too, sir.

Mr. VAN DEERLIN. You definitely would assign the No. 1 priority to the label of packages, wouldn't you?

Dr. SCOTT. Not particularly. I think they are both important. I think it would be desirable to have it in both places.

Mr. VAN DEERLIN. If you had to take one or the other, which would you take?

Dr. SCOTT. This is my expert on public information. Mr. Read.

Mr. READ. This is a difficult choice but I certainly would say that the very fundamentally important thing is that the cigarette package be labeled. We have met in the last 5 or 6 years with hundreds and hundreds, thousands of high school kids to talk over this problem. This point is always raised. If cigarettes are such a serious threat to health, why doesn't the Government require the package to be labeled? I think it is terribly important that the package be labeled.

Dr. SCOTT. I might add, Mr. Van Deerlin, that it hardly seems reasonable to me that any product which is consumed by the human body should not be labeled and its contents recorded thereon, just the same as any package of Wheaties or any other food that is consumed in the body, or drug.

Mr. VAN DEERLIN. At the point of purchase, or consumption, you would have this warning?

Dr. SCOTT. Yes, sir.

Mr. VAN DEERLIN. You would agree that any warning that was imposed upon advertising, and especially broadcast advertising, might achieve the proportions of a national joke.

Dr. SCOTT. I do not think it should be prepared as a national joke. This is why I believe and I have considerable confidence in spite of my position here in the people in the advertising media and the tobacco industry to work out a sound wording or labeling that would accompany their advertising.

Mr. VAN DEERLIN. Yes; but you know how once every 2 years we get this repetition of "the following announcement is paid for by the Kornegay for Congress Committee," and they zip through it, and this comes even on a 10-second spot announcement. This for a period of 2 or 3 weeks every 2 years becomes something of a joke. [Laughter.]

Mr. KORNEGAY. He has stopped preaching and gone to meddling now. [Laughter.]

Mr. VAN DEERLIN. Perhaps I better stop while I am still even. Do you not think, Dr. Scott, that any kind of disclaimer like this on repetitive advertising would become an annoyance, if not a joke, to the public?

Dr. SCOTT. I do not think it has to be repeated verbally all the time. I think it can be thrown on the screen in some dignified way. It does not necessarily have to become a joke or anything of that sort. We have to remember there are 4,500 young people taking up cigarette smoking every day. These are all new people. It has to be a continuing and repetitive process to be effective. Even the advertising people tell us that for their own product.

Mr. KORNEGAY. Would the gentleman yield?

Mr. VAN DEERLIN. Yes.

Mr. KORNEGAY. Dr. Scott, as a practical matter, don't you feel that if the industry is forced by the ruling of the FTC to proceed in the manner which the FTC has presently suggested that the practical result would be that there would just be no cigarette advertising for anybody?

Dr. SCOTT. No; I do not believe that.

Mr. KORNEGAY. In other words, you think that the industry would say, "Smoke Smith Bros. cigarettes, they have a fine flavor; but we must caution you if you do smoke them it is hazardous to health and may cause death by cancer or other diseases"?

I think that is almost a quotation from the FTC's rule.

Dr. SCOTT. No, as I interpret it, they were going to leave the exact wording up to the advertising and tobacco industry.

Mr. KORNEGAY. That is what Mr. Dixon tried to say. But I said as long as it substantially complied with what he says in his rule, which I do not have here before me, but as I remember it said, "caution—cigarette smoking is a hazard to health or dangerous to health." He did not say excessive, he did not say constant or prolonged. He just said "cigarette smoking." That could be one or a million.

Dr. SCOTT. Yes; but I think he left it open so it could be modified and adjusted to a satisfactory statement that shouldn't be frightening. It must be just straightforward, honest documentation.

Mr. VAN DEERLIN. Dr. Scott, perhaps your colleague in this field may have a suggestion of anything that can be said in less than 5 seconds on this point.

Mr. READ. No; I really can't contribute much on this. It would be an extremely interesting assignment for an advertising agency to be faced with, I would think.

Mr. VAN DEERLIN. Thank you, Mr. Chairman.

Mr. BROYHILL. Dr. Scott, I was very interested in your answers to the questions put to you by Mr. Curtin.

To what extent is your organization utilizing money and scientific manpower to determine what, if any, ingredient in tobacco causes cancer as you have so testified?

Dr. SCOTT. I haven't those figures here but maybe Mr. Garfinkel of the medical affairs department might be able to give you a pretty specific statement.

Mr. GARFINKEL. The actual allocation of funds for lung cancer research is in the research department. I am not familiar with all of the details. We are supporting many, many research projects. One, to find more factors about the relationship. We do give a grant to one company which is evaluating the effects of the charcoal filters on experimental animals. There is a recent report not yet published by one of our researchers supported by the American Cancer Society in Buffalo who has reported on the effects of the various blends of cigarettes, the American verus English, on the production of tumors in mice. This report has just been prepared and is being sent for publication.

The exact amount of money for lung cancer research is not more than $2 million. Is that right?

Mr. READ. This is a hard figure to get hold of. We have spent over the years since the war about $125 million in support of research; $5 million, or between $5 and $6 million, specifically bears on lung cancer, tobacco components, all this sort of thing.

I am advised that actually a large part of the rest bears on the problem since it is basic research for an understanding of cancer. A large part of the research must be basic. You can't break it down and say it is a study of breast cancer or uterine cancer or lung cancer.

Mr. BROYHILL. Then would you agree that not very much is being spent in this area?

Dr. SCOTT. We spent $12 million last year and this year in cancer research. A major portion of that will be directed to the basic understanding of the cause of cancer. This applies directly to cancer of the lung and as to any other cancer. But specifically for tobacco, you heard Mr. Read and Mr. Garfinkel give you their best estimates.

I would be glad to have this researched for you and send you the figures. Offhand I would say there should be at least 10 percent of it.

Mr. BROYHILL. Let me just say this and I will finish: A few moments ago our colleague, Mr. Henderson, of North Carolina, advocated a Federal participation in research. He advocated that the Congress appropriate additional moneys for research not only in the causes of cancer of the lung to determine whether or not tobacco is the cause, and if it is the cause, what ingredients in tobacco causes it.

Would you support such a massive or crash program of research sponsored by the Federal Government?

Dr. SCOTT. I support research of any kind. I think this is a very important and urgent type of research to support. I would not recommend what you call a crash program. I think one should be care-

fully prepared and evaluated by advisory committees of top scientists and physicians in the country. The basic program of research and the allocation of funds can then be established for the scientists and technicians in the proper laboratories to do this job.

An all-out crash program to go right out and get the answer for you in a year, I do not believe can be done without a good deal of waste of money, sir.

Mr. BROYHILL. No other questions, Mr. Chairman.

Mr. O'BRIEN. Mr. Watson?

Mr. WATSON. Thank you, Mr. Chairman.

Dr. Scott, I believe Dr. Burford earlier stated in his testimony that the Surgeon General's conclusions were primarily statistical rather than scientific or etiological.

Do you differ with that position?

Dr. SCOTT. Yes, sir. I do not have that book here with me but I believe a lot of their evidence was based on experimental findings. I quoted Dr. Auerbach and Dr. Purdy Stout, two of the foremost pathologists in this country, who have demonstrated pathologic changes in the bronchial tree directly related to cigarette smoking.

There is also considerable experimental proof on which the Surgeon General's report was based. So it was not based just on statistics.

Mr. WATSON. Help me to understand how only the lung could be susceptible to cancer by the inhalation of smoke when the other organs of the throat are equally exposed. To what do you attribute the particular susceptibility of the cancer to the lung?

Dr. SCOTT. Yes. There are several factors involved here. First, different tissues in different parts of the body have different susceptibilities. Cancer of the lung is more prominent in cigarette smokers probably because the main bronchial tubes are lined by little cilia—little beating hairs that tend to clean out the lung. Tobacco smoke paralyzes them. It also increases the amount of mucous that forms in the bronchial tree.

The other structures in the nasopharynx do not have these structures. This is probably the reason it occurs more in the lung.

However, I should emphasize and bring out that there is an increased incidence of cancer of the voice box and of the pharynx and of the mouth in cigarette smokers over nonsmokers.

Mr. WATSON. I believe you testified to the competence of Dr. Burford. As I recall he made the statement that tests have been made to produce lung cancer in animals by the strict inhalation of smoke, and all of those tests have proven negative.

Do you differ with that statement?

Dr. SCOTT. Yes, I do.

Mr. WATSON. Do you not agree that primarily the tests have resulted in the production of cancer of the smear tests and so forth?

Dr. SCOTT. Those were the early ones. You see, it is very difficult to get animals to inhale smoke because by instinct they know they should not. It is a detrimental experiment and they avoid it.

In Detroit they have been training monkeys to smoke. If this can be accomplished, and apparently it has, we will probably hear many more results about direct inhalation of cigarette smoke in the production of cancer.

Mr. Garfinkel probably has specific instances which he can quote to you.

Mr. WATSON. Doctor, in that connection, your comment that it is difficult to get animals to inhale smoke—and I would agree with that—and I to conclude that you only give those tests to animals that are willing to take them?

Dr. SCOTT. No, sir.

Mr. WATSON. You do not mean that at all, do you?

Dr. SCOTT. Not in the least. One reason why it is difficult to demonstrate it in animals, too, is because you can't get the animal to put the cigarette in his mouth and inhale the main stream of the smoke or the concentrated smoke. This is why it is the man who inhales the cigarette smoke who subjects himself to the greatest hazard.

In any cage with animals, it is almost impossible to get the concentration of smoke to the same degree as when the main stream is brought down into the lungs. It is diffused with the other atmosphere, and if it is that concentrated you would have great difficulty in even seeing the animal.

Mr. WATSON. As for American Cancer Society, I support the movement, and I have had the pleasure of serving as the local county chairman, and I am certainly heartily in accord with the efforts that are being made by the Cancer Society to find the cause of this dread disease. However, I state quite categorically, and I think it is supported by your statement on page 2, that you found the horse, and you are just going to ride him to death so far as cigarettes are concerned.

You make the statement: "It causes at least 100 deaths a day from cancer of the lung and over 500 deaths a day from other diseases." What other diseases?

Dr. SCOTT. Coronary artery disease, pulmonary emphysema, cardiovascular diseases, chronic bronchitis.

Mr. WATSON. The Surgeon General's report did not reach such conclusions, did it?

Dr. SCOTT. I believe they did; yes, sir.

Mr. WATSON. Why did they and the Federal Trade Commission not recommend that you place on the pack of cigarettes that "smoking this product is a major cause of heart and lung disease"?

As I recall the testimony, it said that some 50 percent of the deaths of the excessive smokers was attributable to heart disease, whereas only 15 to 20 percent allegedly attributable to lung cancer.

If that be true, and smoking causes more deaths by heart attacks, why would not the FTC have put that on the package?

Dr. SCOTT. I thought they referred to it as health hazards which would include these.

Mr. WATSON. In your testimony you specifically recommended that the package carry a clear warning that cigarette smoking is a major cause of lung cancer and certain other serious diseases. If it causes almost three times as much heart disease, why single out lung cancer?

Dr. SCOTT. We are here as a cancer society, and this is our major interest. If tobacco smoking and cigarette smoking didn't cause cancer, we would not be here, sir.

Mr. WATSON. Since you have reached that conclusion that cigarette smoking causes lung cancer, you have stopped your research in trying to determine the cause of lung cancer.

Dr. SCOTT. No, sir. We are trying to find out why it does and what the ingredient is. If we can do anything to help evolve a safe cigarette, we want to do it.

Mr. WATSON. In other words, you have narrowed your research down to smoking and further detailed study to find out the thing in the smoke which causes the cancer. You are not studying anything but smoking just now.

Dr. SCOTT. No, indeed not. We are studying every form of cancer. We are a cancer society and not a tobacco society. Anything we can do to find out to help the problem of lung cancer, even in basic research, even in finding the active ingredient if it is one active ingredient or multiple ingredients in tobacco smoke and helping in every way we can to eliminate them.

Mr. WATSON. Doctor, I believe I have two other questions. You say you support Dr. Terry, the Surgeon General, in his recommendations?

Dr. SCOTT. Yes, sir; in general that is true.

Mr. WATSON. Yet you say you support the action which has been taken by the Federal Trade Commission?

Dr. SCOTT. Yes, sir.

Mr. WATSON. Are you aware of the fact that the Surgeon General recommended that his Department handle the labeling of cigarettes instead of the Federal Trade Commission?

Dr. SCOTT. Yes, sir.

Mr. WATSON. But yet at the same time, you support the Federal Trade Commission?

Dr. SCOTT. Yes, sir; I support both of them. In whichever way you people here decide can do the job the quickest and the best, we will support that.

Mr. WATSON. In other words, you support whichever position they take, if it be in accord with your position?

Dr. SCOTT. Absolutely, sir, because I think the important thing here is that there does not become a conflict of interest between Government agencies and settle down into a long dispute as to which agency takes this responsibility. The important thing is that some agency or group of agencies do it and that they do it now and they work it out in a cooperative manner.

Mr. WATSON. Doctor, I have one final question. As a practical matter, if there is a product or a substance or a habit which may be injurious to the health of one of your patients, although you are in doubt about it, you as a doctor would recommend that he not do it, would you not?

Dr. SCOTT. I certainly would, sir.

Mr. WATSON. So even if this report is only conjecture, or may be, you still would recommend your position?

Dr. SCOTT. In my mind, this is not conjecture. This is the result of facts. These are scientific facts from experiments, from pathology, from autopsies, from statistics, and epidemiology studies.

Mr. WATSON. I might state this: We have had some very competent medical testimony that is entirely contradictory to the report of the Surgeon General. In fact, one doctor said he made a study of some 12,000 cases, as I recall, relative to heart disease, and he did not attribute it to smoking.

Mr. NELSEN. Would the gentleman yield?

Mr. WATSON. Yes, I would be happy to.

Mr. NELSEN. You point out in your statement on page 3, that the American Cancer Society supports the proposal of the Federal Trade Commission on this subject. I would like to point out to the witness that many Members of Congress feel that something should be done in this area of cigarette smoking.

Many of us are a little fearful of the trends that seem to be so prolific downtown where agencies having regulatory authority adopt a rule which we think goes beyond the authority that they have.

Many of us feel that this matter should be handled in legislation before the Congress to accomplish what you and many of your associates would like to accomplish.

While you state in you testimony you favor what the Federal Trade Commission has done, I would like to call to your attention that we may want to bring about what you would like to accomplish but we would like to do it by some clear-cut legislative action in the Congress of the United States which will not encourage more and more reaching for power in the field of advertising, communciations, and what have you.

I just wanted to bring that to the attention of the witness. Thank you for yielding.

Mr. WATSON. Thank you very much, sir.

Dr. SCOTT. We understand that. That is why we said if you gentlemen feel that the FTC has the power already, we would support their position. If you do not feel so, then we would support your position to get additional legislation that would enable the appropriate Government agency to carry out such a program.

Mr. WATSON. I have no further questions.

Mr. O'BRIEN. Mr. Brotzman?

Mr. BROTZMAN. Thank you, Mr. Chairman. Doctor, I was rereading your statement on page 2 and I was thinking about this particular area. How many different types of cancer have we been able to isolate or identify effectively?

Dr. SCOTT. You mean over the whole body or are you limiting it to one area?

Mr. BROTZMAN. Let me state it a little better. It is my understanding that cancer is an unusual growth of cells. Is this basically correct?

Dr. SCOTT. Yes, sir.

Mr. BROTZMAN. Without trying to identify it as to the location of the body but as to type, are there not several different types of cell growths known as carcinoma that are known by different names?

Dr. SCOTT. That is right.

Mr. BROTZMAN. Without reference to the location of the part of the body where the cancer is located, how many different categories of cancer have we been able to identify or categorize now?

Dr. SCOTT. This depends a little bit on how detailed the classification you wish to go into, sir. Basically there are probably about a dozen or so types, but each of these can be subdivided into 8, 10, 12 different types. Cancers can originate in any cell within the body. You know well how many different types of cells there are because of the different types of structures that are within the body. In any

organ, for instance, there can be 8, 10, 12, or 20 different types of cancer, depending on the different types of cells that are present.

Mr. BROTZMAN. Referring to the area of the lungs for a moment, there is there a particular category of cancer that is most prevalent in the lung?

Dr. SCOTT. Yes, sir.

Mr. BROTZMAN. What kind is that?

Dr. SCOTT. This is squamous cell carcinoma.

Mr. BROTZMAN. Well, my other question, Is there another category of cancer?

Dr. SCOTT. Yes, sir.

Mr. BROTZMAN. I have not quite finished my question. Is there another category of cancer that is found to exist in the lung cavity?

Dr. SCOTT. Yes, sir.

Mr. BROTZMAN. What are those?

Dr. SCOTT. The adeno carcinoma is the next most frequent and then comes the oat cell carcinoma and some very rare types of carcinoma. All these other types of carcinoma constitute a very small percentage of the total. The great total of the cancers of the lung are the squamous cell carcinomas.

Mr. BROTZMAN. As to the squamous cell carcinoma is that ever to be found on some other part of the anatomy?

Dr. SCOTT. Yes, sir.

Mr. BROTZMAN. Where else may that be found?

Dr. SCOTT. It can be found on the skin, in the vocal cords, it can be found in almost any organ of the body.

Mr. BROTZMAN. Following what seems to be a certain conclusion that you have arrived at, that this particular category of cancer is created by the inhalation of tobacco, have any studies been made to ascertain what causes the squamous cell carcinoma to exist in other parts of the body?

Dr. SCOTT. Only in that the particular type of cell, the squamous cells, are in other tissues of the body. If they are there they can give rise to cancers of the squamous cell type.

Mr. BROTZMAN. Now a little more specifically, is it conjectural that this is perhaps caused by these particular cells coming into contact with smoke?

Dr. SCOTT. This is certainly true in the lung.

Mr. BROTZMAN. I am talking about other parts of the anatomy now.

Dr. SCOTT. I don't recall any, sir, when I say other parts of the anatomy I presume you are excluding the whole respiratory cavity?

Mr. BROTZMAN. What I am trying to find out is whether the scientific studies have determined whether the particular category or type of cancer found most prevalently in the lung is found in other parts of the body, and if there is any correlation in other parts of the body between some other irritant that causes it there, or smoke, or the type of environment that the individual lives in.

In other words, I am just trying to find out how tightly the studies show that this particular type of lung cancer is related to the inhalation problem?

Dr. SCOTT. I think it is specifically related to the inhalation problem. There is no other part in the body where squamous cells are subjected to the concentration of smoke as occurs in the respiratory passages.

Mr. BROTZMAN. What suggested all of this is your statement on page 2, relative to Dr. Auerbach, where you say he and his associates have presented convincing evidence that only the rare adeno carcinoma of the lung is the cancer of the lung that is not connected with smoking?

Dr. SCOTT. Yes, sir.

Mr. BROTZMAN. What does the word "adeno" mean?

Dr. SCOTT. Adeno carcinoma is another type of cancer that arises from a different type of cell that is in the bronchial tree.

Mr. BROTZMAN. Is this conclusive that this particular type of cancer is not in any way related to inhalation of smoke?

Dr. SCOTT. In the studies made by Dr. Auerbach and his associates they have never found it in anybody that did smoke. Whenever they have studied the lungs of people who have developed cancer from smoking, the only type of cancer they found was the squamous cell. Individuals in whom they found the adeno carcinoma and went back in their histories they found out that they did not smoke.

Mr. BROTZMAN. I was interested in your answer a little bit ago relative to corn silk smoking. You seem to indicate that you could get cancer from this.

Dr. SCOTT. It would be possible if you would smoke it for 20 years and smoke a pack a day. I can't do anything but guess but I would be very suspicious. I don't think anybody can smoke corn silk for 20 years.

Mr. BROTZMAN. Is it your theory that smoking causes cancer or that tobacco smoking causes cancer?

Dr. SCOTT. Tobacco smoke, sir.

Mr. BROTZMAN. What about other kinds of smoke?

Dr. SCOTT. I don't know. They have never been inhaled in sufficient concentrations over a long period to have made it worthwhile for anyone to seriously investigate it.

Mr. BROTZMAN. I was just trying to recollect Mr. Dixon's testimony here a moment ago. The prohibition as far as the FTC trade regulations is concerned, it seems to be applicable only to cigarette smoke. But you indicated in your earlier testimony that you feel that virtually all contact with tobacco is a possible cause of cancer. Would that be a correct statement?

Dr. SCOTT. This is true when used in large amounts over a period of years.

Mr. BROTZMAN. Do your studies clearly indicate that putting tobacco between gum and cheek by a tobacco chewer, causes carcinoma?

Dr. SCOTT. Yes, this has been a medical observation over the years. That people who do have a higher incidence of cancer in that particular spot in their jaw than people who do not chew tobacco.

Mr. BROTZMAN. You have performed epidemological study in this regard.

Dr. SCOTT. I have not. But there are reports in the literature by people who have.

Mr. BROTZMAN. Has your society performed such a study?

Dr. SCOTT. Mr. Garfinkel told you this is in the process now, specifically making inquiry. Do you want to answer this specifically?

Mr. GARFINKEL. In our current study we are following half a million men for 6 years finding out which ones die. We know which ones

are tobacco chewers and snuff takers. There are very, very few men, only 3 percent or so, it will depend on how many of them die over a period of 6 years in order to be able to determine whether there is an increased elevation in mouth cancer risk in people who are tobacco chewers as people who never include tobacco. It will take several years of followup. Eventually we will have some findings. This is the first study that actually has gone into this in great depth.

Mr. BROTZMAN. Thank you.

Mr. O'BRIEN. Thank you, Doctor.

Regardless of the evaluation by individual members of the testimony here today, I think all of us are agreed that you and your organization are performing a tremendous public service.

Dr. SCOTT. Thank you, Mr. O'Brien.

Mr. O'BRIEN. I have been directed by the chairman to state that these hearings will now be recessed subject to the call of the Chair and in all frankness, that might be several weeks from now because there will be a recess of the Congress to permit a great party to select its candidate for President.

Dr. SCOTT. Thank you, Mr. O'Brien, for permitting us to come.

Mr. O'BRIEN. I would suggest to the distinguished gentlemen who were waiting so patiently to testify this morning that they may either file their statements if they desire, or they may wait until the hearings are resumed at the call of the Chair.

The hearing stands adjourned.

(The following material was submitted for the record:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., July 2, 1964.

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate having the opportunity to submit a statement on my bill, H.R. 9512, to amend the Federal Food, Drug, and Cosmetic Act so as to make that act applicable to smoking products, for inclusion in the record of hearings on bills relating to cigarettes and smoking products before the Interstate and Foreign Commerce Committee.

H.R. 9512 provides that cigarettes be subject to the labeling provisions of the Federal Food, Drug, and Cosmetic Act. It is not intended to prohibit the sale of cigarettes, or to influence people to stop smoking cigarettes. It is intended to warn the public through labeling, that scientific studies indicate a direct relationship between cigarette smoking and many diseases, disorders, and disabilities which the human body suffers. It is intended to bring the health facts to the attention of cigarette smokers, and then to allow them to make their own decisions as to what they wish to do.

Nicotine content of food sold to the public is controlled by the Food and Drug Administration. It allows a residue of only 2 parts of nicotine to 1 million part of food. The average cigarette contains 6,000 times as much nicotine as is permitted in food—or 12,000 parts in 1 million. Statistics tend to show that the death rate for regular smokers, on the average, is 32 percent higher than for nonsmokers.

Protection of the public is the sole reason for my having introduced H.R. 9512. It is my sincere hope that prompt and favorable action will be taken on it by the committee.

Yours sincerely,

JOHN J. RHODES.

STATEMENT BY GOV. EDWARD T. BREATHITT OF KENTUCKY

Mr. Chairman and distinguished members of this committee, Kentucky is one of several States that has a tremendous economic stake in the tobacco industry and, thus, the cigarette industry. For this reason I feel compelled to testify before this committee in opposition to several pieces of legislation which you are considering that could damage severely our tobacco economy.

But Kentucky's stake in tobacco is not the only reason I am submitting this testimony. I am voicing my opposition because the apparent aim of these measures you are studying is to harass and regulate a legitimate industry to death—contrary to sound principles of trade, contrary to fair and justifiable practices of regulation which protect the public.

Tobacco accounts for about $300 million or 45 percent of Kentucky's farm income each year. It is by far Kentucky's chief cash crop, producing 82 percent of the receipts from all crops.

Kentucky grows 21 percent of all tobacco and 70 percent of the burley grown in the United States. Fifteen thousand Kentucky farms last year produced burley on 226,000 acres of Kentucky land.

This is the tobacco picture in Kentucky as it relates to the farmer. But it is an incomplete picture of the impact tobacco has on Kentucky's economy.

The tobacco industry provides some 12,000 jobs in processing and manufacturing in the State and some $50 million annually in wages and salaries. This does not include those who profit from the transportation of tobacco or those who distribute and merchandise it.

It is estimated that tobacco means a billion dollars directly and indirectly to Kentucky's economy each year, including the $300 million that goes to the farmers who grow it. This does not include additional millions of dollars that are paid by the industry and the consumer in State, county, and city taxes.

This is not all. Tobacco is not only a crop but a way of life for many farmers from one end of Kentucky to the other. Many of the farms on which it is grown are small and suited only to intensive farming of a main cash crop. Any action or any influence that restricts or disturbs the financial benefits of this crop will result not only in economic loss but in severe sociological upheaval and change that would be difficult to cope with.

We are presently faced with such change and with tremendous economic problems as our Appalachian counties switch from a coal economy to other pursuits, and the Congress has been asked to pass far-reaching legislation to help redevelop this region. I sincerely hope that no action is taken that would so restrict the sale of tobacco that poverty is extended into Kentucky's tobacco growing counties.

I do not believe that measures that seek to restrict and retard this important product to which Kentucky and other states owe so much are as important to the American people as legislation which seeks to find new uses for the product and to minimize its dangers.

For that reason I was pleased by the action of the House of Representatives in voting a sizable appropriation for tobacco research—much of it to be conducted in Kentucky.

Last winter I appeared before the Tobacco Subcommittee of the House Agriculture Committee and stated that I thought research, and research along a number of lines, was desirable to protect the tobacco industry and to assure the consumer of the safest product possible. I offered the facilities of the University of Kentucky Agricultural Science Center, the University of Kentucky Medical Center, and Spindletop Research, Inc., all of which are located in or near Lexington.

It is my pleasure to report to you that some research projects on tobacco are now being conducted at these facilities and that more will be as funds become available. I restate my position that these insttiutions of research stand ready to help us find answers we are seeking and that they should be used to the fullest.

When the Federal Trade Commission held hearings in March on proposed labeling and advertising regulation, I submitted testimony in opposition to their proposals in which I said that what they sought to do was legislative in nature and should be considered only by the Congress. I still hold this opinion, although I am still in opposition to the regulations sought by the bills you are considering.

Without going into detail on the requirements of any particular measure, I would like to state my opposition to the whole principle of forcing a cigarette company to advertise that its product is not good for you or else not to advertise. I am likewise opposed to any regulation or law that would require a legitimate product—a product that is well understood by its consumer—to bear a caution or poison label on the grounds that unwise use over a long period of time might prove detrimental.

These legislative measures, like the FTC regulations just released, are based on statistical evidence published in the Report of the Advisory Committee to the Surgeon General of the Public Health Service on Smoking and Health, yet this report has never been completed.

The report itself said that a second phase of the study from which the report was made would be necessary before intelligent recommendations for action could be made. The report was issued more than 5 months ago but thus far there has been no further mention of phase II of the study, a part of the project which the Committee said was vital.

It is my belief that the tobacco industry and the public have a right to expect phase II of the study to be completed and released at the earliest possible time and that no action to restrict or hamper trade in tobacco products should be considered until it has been completed and released.

Several weeks ago the cigarette industry adopted a code of advertising which its various companies agreed to live by and which seems to be a reasonable set of practices relating to sensible and tasteful presentation of their products. The code is to be administered by a prominent American, a former Governor of a great State, a man generally acclaimed for his intelligence, his fairness, and his administrative talents.

I think the industry should be applauded for this action and that all agencies of Government should give this code a chance to work before imposing new regulations or restrictions on the industry's advertising or passing new laws to regulate advertising.

I am sure the members of this committee realize the tremendous effect any of the bills being considered would have on this Nation. In my opinion they could greatly damage our economy and they could do great harm to a whole industry and an entire agricultural area, and I do not believe they would benefit the consumer.

To sum up my feelings on this entire subject, I believe we should push for more and better research to provide the safest tobacco products possible and to protect both the consumer and the industry; we should insist on completion and publication of phase II of the Surgeon General's report on smoking and health; we should give the cigarette industry's advertising code a chance to work, and we should insist that regulations which may become necessary are the purview of Congress and not of independent bodies or commissions.

I thank you for the opportunity of submitting this testimony.

MICHIGAN DEPARTMENT OF HEALTH,
Lansing, Mich., July 2, 1946.

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN HARRIS: I should like to voice my strongest support for meaningful Federal action related to the control of cigarette smoking in this country.

The evidence condemning cigarettes as a cause of disability and premature death is massive and in my opinion incontrovertible. To get the job done, particularly to protect our children, we now need national sanctions against cigarette smoking, along with what we are able to do in our States and communities. Otherwise, the lack of forceful action nationally will speak so loudly that the youngsters will not be able to hear what we say.

Specifically, we have supported and continue to urge a strong national program to label cigarettes as hazardous, to prohibit or to control cigarette advertising, and to provide funds to help support vigorous health programs to reduce cigarette smoking, including health education for young people through community groups and the schools. In view of the acknowledged difficulties in securing legislation in this area, I would strongly urge that every effort be made

to encourage and support action through existing mechanisms and within the scope of existing legislation, given its broadest possible interpretation. In particular, I believe that much could be done if strong and positive support were given for action now by the Federal Trade Commission and by the Public Health Service, along with necessary funds.

There are those, I know, who question the possibility of doing anything at all about this problem, contending that changing such a deeply ingrown habit is not possible. These folks, it seems to me, are failing to note what an aroused citizenry was able to do in changing certain other cultural patterns—such as the use of the common drinking cup, and the widespread practice of chewing and spitting on every streetcorner. Pessimism in this instance would in fact deny one of the great American ideas—that we can use what we know constructively, together, for more productive, happier living.

As indicated in the attached listing, we in Michigan have confronted this problem. We now greatly need to have strong national action to establish a framework for an effective, longrun effort in this field.

Sincerely,

ALBERT E. HEUSTIS, M.D.

MICHIGAN ACTION REGARDING SMOKING AND HEALTH

1. Early action: In 1960, the Michigan State Health Commissioner took the position that cigarettes were harmful to health and steadfastly pursued this theme in public appearances and through available mass media.

2. On January 10, 1964, anticipating the report of the Surgeon General's Committee, the State health commissioner pointed out that the time had come for meaningful action against cigarette smoking. Immediately following the Surgeon General's report, we urged that he support the control of cigarette advertising—which could undermine the best educational and information efforts.

3. At the request of the State health commissioner, Michigan's Governor George Romney called a conference on the cigarette hazard to advise the State health commissioner on what should be done to protect the health of the people. Groups involved included several State agencies (revenue, public instruction, administration, attorney general, police, health), and voluntary and professional groups (cancer, heart, tuberculosis and respiratory disease, health council, physicians, hospital associations, as well as legislators and representatives of press associations and advertising). As a result of specific recommendations of this conference, the following action was taken:

(*a*) Legislation was introduced which would have required the licensing of cigarette retail outlets and vending machines, with fees going for a health program related to cigarette smoking. In a public hearing, the industry was most successful in making the point that action, including appropriations, would surely be taken on the national level, so that State action would be a duplication of effort. The legislation failed passage.

(*b*) The State health commissioner recommended that the Surgeon General support the development of a meaningful national program of labeling cigarette packages as dangerous to health.

(*c*) The State health commissioner recommended to the healing professions of the State including physicians, osteopaths, and nurses that they take action to discourage cigarette smoking both by precept and example.

(*d*) The State health commissioner recommended the discontinuance of the sale of cigarettes in vending machines in health department offices, patient care institutions throughout the State. As a result of this, nearly 100 hospitals in the State reported that they had removed their cigarette vending machines or had moved them to nonpublic areas.

(*e*) Acting on the recommendation of the State health commissioner, the Governor of the State directed all State agencies to institute positive safeguards which will insure that minors do not purchase cigarettes and tobacco on State property or premises under the control of State agencies to which the public has general access. This included universities and colleges.

(*f*) The State health commissioner called upon the superintendent of public instruction to join an effort to encourage school districts in the State to review and strengthen policies and programs regarding the health of the school-age child.

(*g*) In an initial step toward the possible coordination of agencies and groups interested in the problem of smoking and health, the State health commissioner surveyed the concerned private and public organizations to get an idea of scope and direction of their interest.

THE METHODIST CHURCH,
Maysville, Ky., June 15, 1964.

Hon. OREN HARRIS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR SIR: I am writing you to express my great concern that our U.S. Government require, through proper legislation, that cigarette advertising shall be so labeled as to indicate the health hazard involved in their use.

Us taxpayers in the United States have provided many thousands of dollars to make possible the research which was the basis of the report of the U.S. Surgeon General on the effect of the use of tobacco on the human system and the connection of lung cancer therewith.

Shall we allow the commercial interests of tobacco manufacturers to nullify the scentific findings which have been secured at great cost in time, effort, and money?

We are a nation that, once upon a time, were about ready to throw belief in God overboard and bow at the altars of science as our saviour. Now that science cuts across our path of indulgence, shall we allow economic interests to close the eyes of the public or remove from their sight what science is trying to tell us in an important and critical area affecting the health of the Nation?

I would voice a strong appeal that your influence and that of your committee be used to secure the labeling of cigarettes in such a manner as to indicate the danger to health which their use involves. Our Government, then, would be in the clear and the responsibility would be placed squarely on the shoulders of the users in the event of smokers becoming victims of lung cancer. I trust our Government will discharge the responsibility to her citizenry.

Most truly yours,

ROBERT L. ANDERSON, D.D.

NATIONAL TUBERCULOSIS ASSOCIATION,
New York, N.Y., June 19, 1964.

Representative OREN HARRIS,
Chairman, House Committee on Interstate and Foreign Commerce,
New House Office Building, Washington, D.C.

DEAR CONGRESSMAN HARRIS: As a major voluntary health agency interested in causation and control of respiratory diseases, we wish to express our concern over advertising of cigarettes which encourages young persons to smoke and the fact that cigarettes are sold with no indication of their possible hazard to the consumer.

In 1904, when the National Tuberculosis Association was founded, tuberculosis was the leading cause of death in the United States, a fact difficult to appreciate in this time of great advance against communicable disease. Although, unfortunately, over 50,000 cases of tuberculosis are still reported yearly, the decrease in incidence over the years nevertheless has been phenomenal. At the same time that tuberculosis has been declining, however, deaths from many other chronic respiratory diseases have been showing consistent and alarming increases. Deaths from emphysema have doubled in the past 5 years, and cancer of the respiratory system caused 10,000 more deaths in 1962 than in 1957. Although the reasons for these increases are for the most part obscure and undoubtedly are complex, the influence of smoking is evident from the carefully documented Report of the Surgeon General's Advisory Committee on Smoking.

Members of our medical section, the American Thoracic Society, are constantly faced with the frustrating problems of respiratory disabilities. Changes in the respiratory system from many of these chronic diseases are irreversible and, at this stage of our knowledge, research must continue to play a major role. Any factor which has been shown to be implicated must, therefore, be given serious consideration if we are to act responsibly in our efforts to control these debilitating and often fatal diseases.

It seems appropriate that the Federal Government take a strong stand in the matter of indiscriminate advertising and proper labeling of cigarette products. Not to do so seems to us to abrogate our duties and responsibilities to the public, particularly to our young people. They should have the opportunity to know the possible consequences of starting to smoke and should be able to make this decision free of the influence of seductive advertising which their lack of experience and sophistication prevents their evaluating properly.

We trust your committee will take a courageous and firm stand in these matters of increasingly serious concern to the future health of American citizens.

Sincerely yours,

JAMES E. PERKINS, M.D., *Managing Director.*

GREENSBORO, N.C., *June 15, 1964.*

Hon. OREN HARRIS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR MR. HARRIS: It is my understanding that hearings are now being conducted on: "Shall health warnings be placed on all cigarette advertising?" Because of this understanding I would like to urge that the committee take some of the following steps:

(1) I would like to see warning labels placed on cigarette packages to warn people of the hazard of cigarettes on health.

(2) I would like to see tobacco advertisements removed from magazines and newspapers or at least see a more honest approach in their advertising.

Because of the facts of the Surgeon General's report proving the dangers of smoking, I think that we ought to do something about this.

Your attention and consideration to my opinion and concern is greatly appreciated.

Yours very truly,

ROBERT OSBORNE.

AGENCY OF THE OHIO STATE LIFE INSURANCE CO.,
Lexington, Ky., June 15, 1964.

Hon. OREN HARRIS,
Chairman, House Commerce Committee,
House Office Building, Washington, D.C.

DEAR MR. HARRIS: With the evidence being what it is concerning the detrimental effects of cigarette smoking on the health of our people, it seems to me that stringent legislation should be passed regulating cigarette advertising; in particular, such advertising as makes claims concerning the superior quality of any cigarette pertaining to the health advantages of that cigarette in general.

Also, advertising that inflames the imagination of prospective smokers as to the social status attached to cigarette smoking should be prohibited.

It is my feeling that the sale of cigarettes to minors should be prohibited and that the free distribution of cigarettes to inmates of public institutions should be outlawed.

Honest research on the health effects of the use of tobacco should be continued at Government expense. Our Federal and State Governments should provide every protection possible for the health and welfare of the citizens and, in the light of the Surgeon General's report indicting cigarette smoking for thousands of early deaths from lung cancer, cardiovascular diseases, emphysema and chronic bronchitis, and related illnesses, and in light of other substantiating research and reports, I believe the Congress of the United States should act in best interests of the health and welfare of our citizens.

Sincerely yours,

OTIS C. AMIS.

LOUISVILLE, KY., *June 13, 1964.*

Congressman OREN HARRIS,
House Commerce Committee,
Washington, D.C.

DEAR MR. HARRIS: In the interest of the health of the young, as well as the old, some type of health warning should be placed on all cigarette advertising. Many young men and women would be persuaded never to pick up the habit if such a warning were sounded.

As a practicing physician for 35 years, I strongly urge some positive action be taken in this direction.

Sincerely,

J. KENNETH HUTCHERSON, M.D.

METHODIST FELLOWSHIP SEMINAR,
Wilmore, Ky., June 18, 1964.

Congressman OREN HARRIS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR MR. HARRIS: The singing and musical cigarette ad commercials are getting so obnoxious and deceptive that something should be done about it. It is my hope that you and your committee will act favorably upon legislation which will place stringent restrictions on cigarette advertising and require cigarette makers to label their products as dangerous to health. Skull and crossbones is what each package should bear.

The proposed advertising code by the tobacco interests is so full of evasive subterfuge that their action should be supplemented with strong restrictive measures.

Sincerely yours,

H. A. HANKE.

Wilmore, Ky., June 15, 1964.

Congressman OREN HARRIS,
Chairman, House Commerce Committee,
Washington, D.C.

HONORABLE SIR: I understand that your committee will soon begin hearings to determine whether or not Federal action is needed to regulate cigarette advertising. I have read a number of articles in popular periodicals and in scientific journals on cigarette smoking, and the great majority of them bring out clearly that the use of tobacco presents a health hazard.

My wife and I would like you to give serious consideration to the scientific evidence at hand, and to enact whatever legislation is necessary to insure that the public is adequately warned whenever the use of a product could possibly injure the health of a single citizen.

Yours sincerely,

HENRY H. HOWELL.

ASBURY MINISTERIAL ASSOCIATION,
Wilmore, Ky., June 19, 1964.

Hon. OREN HARRIS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR HONORABLE HARRIS: In behalf of the ministerial association I would like to give you our views on the question, Shall health warnings be placed on all cigarette advertising?

We believe definitely that there should be health warning labels on cigarettes. Also, we advocate the removal of advertising from magazines and the general restriction of the advertisement of cigarettes.

Sincerely yours,

GARY MARKS.

ASBURY COLLEGE,
Wilmore, Ky., June 11, 1964.

Hon. OREN HARRIS,
Chairman, House Commerce Committee,
Washington, D.C.

DEAR SIR: I understand that the House Commerce Committee is conducting hearings on the question: Shall health warnings be placed on all cigarette advertising? My purpose in writing this letter is to urge you to do everything in your power to see that warning labels are placed on cigarette packages and to restrict cigarette advertising and also to remove cigarette ads from magazines.

The fact that cigarette smoking causes lung cancer has been proved beyond a reasonable doubt. Many people are being deliberately confused about this. The National Education Association Journal for March 1964, page 66, says, "Whenever medical statistics are announced linking smoking to lung cancer, heart disease, stomach troubles, and other internal disorders, they are promptly followed by tobacco industry statements that tend to confuse youngsters and the general public." This is tragic.

Among many other things "Smoking and Health," the Surgeon General's Advisory Committee Report on Cigarette Smoking makes it very clear that there is no scientific evidence that filter tips, including those containing activated charcoal, lessen the health hazards of cigarette smoking.

I realize that many of the magazines derive much money from cigarette advertising, but I for one would much rather pay much more for the magazines than to have them include these deadly and disgusting cigarette and liquor ads.

Sincerely,

RUTH L. VAN SCIVER, *Librarian.*

SANTA BARBARA, CALIF., *July 1, 1964.*

Hon. OREN HARRIS,
Chairman, Interstate and Foreign Commerce Committee,
House of Representatives,
Washington, D.C.

MY DEAR MR. HARRIS: I note that your committee is conducting a hearing with respect to cigarette advertising. May I respectfully request that the committee add the enclosed copy of "Smoking and Cancer Prevention" to the public file of the hearing. Additionally, I would also like to be placed on record as per the following statement:

It is my considered opinion that the youth of our country are entitled to clear and unequivocal warning with respect to the cancer and other health hazards which have been related to the smoking of cigarettes. Consumption of individual cigarette brands is accomplished by astute psychological motivation which creates an association between smoking on the one hand such universally desirable objectives as status, sophistication, popularity with the opposite sex, etc., on the other hand. The prospective customer is clearly entitled to prominent and unequivocal advisal with respect to the cancer and health hazards involved.

The incorporation of such warnings, both in cigarette advertising and cigarette labeling, would also be in the best interests of the shareholders of the cigarette companies. The prospect of massive legal liability would obviously be minimized by appropriate notification to the consumer of the hazards involved. I challenge any representative of the cigarette industry who may object to the Federal Trade Commission ruling to commit his company to liability for loss of life or health by customers who may be introduced to the habit in the future by company advertising which omits warning with respect to the health hazards involved.

I further charge that the cigarette industry has had more than ample time to disprove the case against cigarettes by setting up a massive epidemiological survey which could have included even greater sampling of the general population than the studies, involving approximately 200,000 subjects, which have been conducted previously under the respective auspices of the American Cancer Society and the U.S. Public Health Service. It is my considered opinion that the basic reason why the cigarette companies have not chosen to do so was their awareness of the fact that any broad-scale and sufficiently massive epidemiological study would only add further to the evidence against cigarettes, as per the preliminary results which are already being obtained by the large epidemiological study currently being conducted under the auspices of the American Cancer Society. The preliminary results of this study corroborate the results of the previous surveys conducted by the ACS and the U.S. Public Health Service.

I urge the committee to take note that the large-scale epidemiological surveys which have been conducted establish a clear-cut case for estimating that the smoking of tobacco in its various forms greatly increases the incidence of all forms of cancer combined. The available evidence indicates that an approximate reduction of total cancer mortality among men in the amount of 37 percent could be obtained by elimination of the cancer-causing and cancer-stimulating effects of the smoking of tobacco. Until such time as the industry has established appropriate protection for the user of cigarette products in general and cigarettes in particular, it is under the obligation of notifying the prospective user of the hazards involved.

Against this background it is my considered opinion that any undue delay or failure to give adequate warning of cancer hazards to cigarette smokers is tantamount to condemning up to 300,000 children per year to future cancer illness. Knowing that no Member of the Congress of the United States would want to

find himself in a position of having contributed to the wholesale condemnation of the children of his constituents to death by cancer, I hereby respectfully request prompt and immediate action to implement the requirement of clear and unequivocal warning of the cancer and other serious health hazards involved to be incorporated both on cigarette packages and in all forms of cigarette advertising.

Yours sincerely,

WARREN WELLS.

AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION,
NEW YORK, N.Y., *July 2, 1964.*

HON. OREN HARRIS,
Chairman, Committee on Interstate and Foreign Commerce,
House Office Building, Washington, D.C.

DEAR SIR: The American Newspaper Publishers Association desires to express its views for inclusion in the record of hearings on certain bills now under consideration by your committee which would impose special restrictions on the advertising of cigarettes: specifically, bill H.R. 9655, by Representative Blatnik (Minnesota); bill H.R. 9657, by Representative Dingell (Michigan); and bill H.R. 9808 by Representative Riehlman (New York).

ANPA is a membership association of daily newspapers published in cities and communities throughout the United States and Canada. It was formed in 1887, and its members include more than 880 daily newspapers with approximately 90 percent of the daily newspaper circulation in the United States.

Bill H.R. 9655 and bill H.R. 9657 would authorize the Federal Trade Commission to direct that all cigarette advertising include a statement to the effect that smoking is injurious to health. They would also authorize the Commission to "provide for the elimination of all advertising matter which tends to make cigarette smoking attractive to children." Bill H.R. 9808 would authorize the Federal Trade Commission to prescribe mandatory cautionary statements to be included in any cigarette advertising.

If cigarette smoking is found to be a national health hazard, we think that the problem should be attacked directly. Indeed we note that other bills pending before this committee would provide for tobacco research programs, for public information programs, and for the inclusion of warning statements in cigarette labeling. These other bills do not raise the serious constitutional and public policy questions that are raised by proposed restrictions on cigarette advertising.

Cigarettes are legitimate articles of commerce. The tobacco industry is an important segment of our economy. We respectfully submit that fundamental questions of constitutional law as well as of public policy are raised when the Government seeks to regulate the right to publish truthful advertising concerning legitimate articles of commerce. We believe that the Government should not prohibit the truthful advertising of any product or service which it is legal to sell. We believe each publisher has not only the right but the duty to determine individually the content of his newspaper. This applies as much to the advertising content as to the news content.

ANPA takes no position on bills relating to proposed research by the Government, public information programs, or labeling requirements. But we do believe that restrictions on advertising such as are proposed in bills H.R. 9655, H.R. 9657, and H.R. 9808 invade areas of individual choice of expression which are protected under the first amendment to the Constitution.

These bills offer a dangerous precedent. In our complex society all of us are subject to many risks every day. People die in automobile accidents. Airplanes crash. It is harmful to eat too much rich food. Many doctors say that it is hazardous for some adults to drink milk or to eat eggs. Perils are associated with liquor and beer, electric light sockets, gasoline, engaging in athletic activities, using products in aerosol containers. All of these can be dangerous. Yet it can hardly be required that all advertisements for these products must contain warning statements.

If the advertising legislation now proposed should be enacted, the precedent would be established that could lead to totalitarian restrictions on the right of businessmen to advertise their products and the right of newspapers and other media to decide independently their policies as to the content of advertisements which they will accept for publication.

Let me emphasize the obvious. Our association does not condone misleading or untruthful advertising. The members of our associations have a long and praiseworthy record of rejecting advertisements which are not truthful and responsible, or which misrepresent the product advertised. Many publishers prefer not to advertise particular products. But we cannot agree that Congress or any governmental agency should determine the content of advertisements of legitimate articles of commerce.

Before closing, we wish again to emphasize the distinction between advertising and labeling. Our concern is only with advertising.

ANPA urges that the Congress not enact bills H.R. 9655, H.R. 9657, or H.R. 9808.

Respectfully yours,

M. W. ARMISTEAD III,
Chairman, Federal Laws Committee.

ANAHEIM, CALIF., *July 2, 1964.*

HOUSE COMMERCE COMMITTEE,
House of Representatives,
Washington, D.C.

GENTLEMEN: In reference to the committee's present consideration of the relationship of smoking and health, we, the undersigned, who are radiation therapists who see and treat large numbers of patients with lung cancer find ourselves astounded and appalled by testimony by prominent physicians who state they do not believe that smoking is a cause of lung cancer. Any physician who states this is grossly ignorant and irresponsible.

It is the experience of ourselves and all of our colleagues who regularly treat lung cancer that cigarette smoking is definitely a cause of the common types of that disease which account for about 90 percent of all primary lung cancers and, therefore, about 90 percent of the many thousands of annual deaths from the disease. We have treated hundreds of patients with the disease and find that the common varieties invariably occur in smokers. In fact, in our total experience we have known but one patient with the common form of primary lung cancer who did not give a history of habitual cigarette smoking. In our location in southern California we have patients from all parts of the country, of varied ages and habits. The one common factor is long-term, habitual cigarette smoking. This constant connection of smoking and lung cancer does not occur with such force in other forms of cancer.

Commonsense then tells us that if we never see a common lung cancer patient who is not a habitual cigarette smoker and if nonsmokers do not get this disease, we must conclude that smoking is hazardous.

To deny this clear evidence is absurd or worse.

Yours truly,

M. L. WEINSTEIN, M.D.
N. E. ROBERTI, M.D.
R. E. MOCKETT, M.D.

HON. OREN HARRIS,
Chairman, House Committee on Interstate and Foreign Commerce,
Washington, D.C.

DEAR MR. CHAIRMAN: A number of legislative proposals are now pending before your committee having to do with the matter of the labeling and advertising of cigarettes. I have in mind those bills listed in your public notice of May 29, 1964, upon which hearings before your committee have commenced (i.e., H.R. 3610; H.R. 4168; H.R. 5973; H.R. 7476; H.R. 9512; H.R. 9655; H.R. 9657; H.R. 9668; H.R. 9693; and H.R. 9808.) As I understand it the basic thrust of these bills is to assure the ready availability of accurate information to the cigarette user not to prohibit smoking or the advertising of cigarettes. I am submitting this letter so that you will also be aware of the position of Radio Advertising Bureau, Inc. (RAB) concerning this general subject insofar as the proposals in question would have an impact upon the use of radio in cigarette advertising.

The Radio Advertising Bureau (RAB) is a trade association comprised of approximately 1,000 radio stations, all 4 national radio network organizations, and a number of station representatives. It is an organization committed to developing and stimulating the widest effective use of radio as an advertising

medium. RAB maintains an extensive library of information about radio as an advertising medium and frequently is called upon for information and assistance in matters affecting radio sales.

RAB has not been unmindful of the recent findings of the Surgeon General's report with respect to cigarette smoking and its possible consequences upon the health of the smoker. As you know, radio has devoted extensive coverage of that report and throughout the broadcasting industry there has been great interest and concern as to the proper role of radio in presenting cigarette advertising material.

We have recently appeared before the Federal Trade Commission in connection with its then proposed regulation covering the advertising of cigarettes—regulations which now have been made final. The Trade Commission would regulate the advertising of cigarettes on the theory that any cigarette advertising constitutes deceptive or misleading advertising unless there is a specific reference to the possibility that cigarette smoking may cause cancer or have other harmful effects on the health of the user. It has been the position of RAB that whatever the national policy considerations might be, it could not be found that every possible reference to cigarettes—even an announcement simply suggesting that one who smokes should try brand X—could be classified as deceptive within the meaning of the legislation upon which the Federal Trade Commission places reliance. We believe this to be a correct position based on the present authority of the Trade Commission.

However, the matters before your committee present broader and somewhat different questions since you are now concerned with what changes, if any, are required in present law to effectuate whatever the Congress decides to be the proper national policy with respect to the labeling and advertising of cigarettes.

It is our belief that if at this point additional legislative action is required, it should be directed to the labeling aspects of the problem. Such an approach would provide the greatest assurance that every purchaser of a package of cigarettes received adequate warning to whatever extent the Congress or the appropriate administrative authorities deemed a warning to be necessary. Thus, the public could be fully informed and at the same time radio would not be placed at a disadvantage in its competition with the printed media for proper advertising revenues. (At this point the annual revenues to radio from cigarette advertising exceeds $20 million.)

A requirement that any cigarette advertisement—even a short spot announcement on radio—carry the kind of warning that, for example, would be required under the recently adopted rules of the Federal Trade Commission would, in effect, simply divert the advertising revenues to the printed media and away from radio. The reason, in substance, is that most radio advertising of cigarettes consists of short spot announcements, i.e., lengths such as 30 seconds or 1 minute at most. It would be impossible to incorporate proposed announcements such as those envisaged by the Federal Trade Commission within such advertising. Such a requirement could more readily be accommodated by the printed media. Thus, the public would not be protected from the impact of cigarette advertising; the results would only be a diversion of the advertising from one media to another.

I would emphasize the position of RAB that radio does not and should not condone practices designed to prevent the public from securing full and explicit information concerning such health hazards as may be involved in the use of cigarettes. We believe, however, that if it is decided that additional information on the part of the public is required, the better, more effective, and more appropriate manner for assuring the availability of such information is to require that it be included in the labeling of cigarette packages. With such labeling every cigarette purchaser would be fully advised; thus the public interest in receiving full information on a continuing basis would be protected without the necessity for imposing the kind of limitation upon advertisng that would discriminate against the broadcast media.

I would appreciate it greatly if this letter could be included in the record of your hearings as an expression of the Radio Advertising Bureau, Inc.

Very truly yours,

EDMUND C. BUNKER, *President.*

ADVERTISING FEDERATION OF AMERICA,
New York, N.Y., June 23, 1964.

Hon. OREN HARRIS,
Chairman, Committe on Interstate and Foreign Commerce, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: In response to the June 3 notice of public hearings on bills relating to cigarettes and smoking products issued by the Committee on Interstate and Foreign Commerce, the Advertising Federation of America, on behalf of its membership, wishes to go on record as opposed to certain provisions of the proposed legislation.

The Advertising Federation of America is the largest advertising organization in the world. Twenty-four advertising associations and related organizations are represented on its board of directors, encompassing every segment of the advertising business. Over 800 company members run the scale from large national advertisers to small retail merchants. But the true strength of the federation lies in its grassroots membership of 145 advertising clubs comprising over 25,000 members.

Since its foundation in 1905, the AFA has been dedicated to the constant improvement of advertising and the protection of its role as a vital force in our economy.

As president of the federation, and in behalf of our membership, I wish to state our position as opposed to certain provisions of the legislation under consideration as follows:

1. Our interest is not limited to the problems of any particular industry, products or commodity but rather concerns itself with the broad field of advertising and takes into consideration the rights of the advertiser as well as the public.

2. We believe that the public has the right to be informed on products whose excessive use may involve serious health hazards through a program of information and education.

3. We believe it is an infringement of the advertiser's right under the first amendment of the Constitution for a regulatory agency of the Government to promulgate substantive rules having the full force of law, and invoking the penalties.

4. We believe that our economic system can operate successfully only if we regard Government regulation as a last resort when all other means have failed.

5. The cigarette industry has agreed to a code to established uniform standards for cigarette advertising, which has been submitted for approval to the Department of Justice, Antitrust Division. The industry has appointed an impartial and highly regarded public figure as administrator of the code.

In summary of our position, it is our strong recommendation that the committee:

1. Strike from these bills any provisions requiring the advertiser to carry in each advertisement the warning that "habitual cigarette smoking is injurious to health" or such other information as the regulatory agency might prescribe.

2. Defer final action on these bills until the cigarette industry has had an opportunity to demonstrate the effectiveness of its own self-regulatory advertising code which takes cognizance of the public welfare.

Respectfully yours,

MARK F. COOPER,
President and General Manager.

A STATEMENT BY THE ASSOCIATION OF NATIONAL ADVERTISERS, INC.

The Association of National Advertisers (hereinafter referred to as ANA) is a nonprofit membership organization which was founded in 1910 to represent the interests of companies which use advertising to an important extent in their sales, public relations, and marketing operations. The association is dedicated to the furtherance of the science of advertising; the elimination of waste and inefficiency in the process of distributing products and services; the safeguarding of the essential values in advertising as an instrument for including sales; and the promotion of the common interest and welfare of its members as buyers of advertising, and otherwise.

Current membership in the ANA consists of approximately 700 companies representing a wide cross section of industry. For instance, the ANA membership by indutsrial classification is as follows:

Industry	*Number of members*
Agricultural equipment	8
Automotive	6
Automotive accessories	16
Brewing	10
Building materials	32
Chemicals	50
Clothing and textiles	55
Drug and toiletries	57
Electrical equipment	19
Food and grocery	61
Industry trade associations	11
Insurance	23
Jewelry, optical, photographic, sport goods	25
Liquor and wine	27
Metals, basic	22
Nonelectrical household furnishings	19
Office equipment	28
Paper	19
Petroleum	35
Soaps, cleansers, polishes	21
Soft drinks	8
Tire and rubber	7
Tobacco	8
Travel and transportation	39
Industrial (other than metals or chemicals)	81

Similarly, the ANA membership is representative of both the most extensive users of advertising such as General Motors, Procter & Gamble, General Foods, etc., and many smaller advertisers as well. In fact, while approximately 75 percent of ANA members invest over $1 million in advertising annually, almost 100 member companies spend less than $500,000 each year.

ANA members, quite obviously, use every advertising medium in their advertising programs. They represent the bulk of the national support for television as 87 of the 100 leading users of that medium are ANA members. However, the advertising investments of concerns represented in ANA are also the principal support of most national magazines, newspapers, business papers, and the outdoor medium as well.

The membership of ANA, of course, has a wide geographical distribution as concerns involved in the association's activities are headquartered in virtually every major city across the country. The geographical distribution of the association is even more pronounced when the plants and distribution facilities of its member companies are taken into account.

ANA entertains, and voices, no opinion regarding the relationship—or lack of one—betwen cigarette smoking and public health. Our association presents this statement because of the public importance of advertising as an economic force. Our position would be qualitatively the same if, instead of cigarettes, this committee were studying any other class of products.

The governing objective—yours and the ANA's alike—is to serve the public's truest interests. The problem is with complexity, not with purpose. Oversimplification may be tempting, but it rarely provides a sound basis for legislation.

Physical health and economic health are both vital to public well-being. Neither should be impaired to serve the other unless no way can be found which will nurture both.

Effective advertising is a sine qua non to the economy our Nation enjoys today. Without it there would be little vigor in competition, or stimulus to the mass distribution which supports mass production and feeds mass consumption.

Without advertising revenues, many of our radio and television stations would cease to exist, our magazines and newspapers would fold, and those media remaining would have to charge the public such high prices that the great entertainment, social awareness, and knowledge values of these media, which we almost take for granted today, would be available only to a few.

The antenna of our association are, therefore, finely tuned to the stirring of trends or tenets, governmental or otherwise, which may proliferate to stifle the robust function of advertising.

The variety of bills before your committe on the subject of cigarette advertising precludes our competent analysis of them in detail at this time. In general, however, we express disapproval of any device for imposing a sort of eminent domain upon an advertiser—a commandeering of his communications to the public—to compel the transmission of governmentally ordained messages.

We recognize, and do not quarrel with, the proposition that an advertisement cannot content itself with a half-truth, and that, to the extent further information is required to obviate deceptiveness in what an advertiser has elected to say, he should not be allowed to stop short of truth. But section 5 of the Federal Trade Commission Act empowers the Commission to enjoin any advertiser who indulges in such deception. The bills with which we are now concerned are of a different nature.

It is not with the prevention of deception that they are concerned. No new law is needed for that. Rather, they seek to turn the persuasive powers of advertising toward discouraging people from purchasing or smoking cigarettes.

The vital function of advertising in our economy is to sell, not to unsell. If Congress believes that a given product (a narcotic, for example) is inherently dangerous—or should be utilized only by certain people under particular circumstances—it should restrict the use and sale of the commodity itself. If, however, it is willing that the item be freely available to the public, it should not erode the independent and important economic function, advertising. The precedent would be an insidious one and, once inoculated, hard to contain.

Governmental dictation of what must appear inadvertising would be tantamount to prohibition. The composition of an advertisement is a highly skilled and specialized process. We know that seemingly insignificant changes in a phase—or even a word—may seriously alter its effectiveness. Advertisers are not likely to risk the moneys that are needed to run a campaign which features copy they feel will defeat the very purpose of their investment.

We are confident that your committee's perceptive analysis of this situation will lead it to conclude that the national interest will not be well served by imposing a form of bondage upon advertising.

STATEMENT OF THE NATIONAL HEALTH FEDERATION, BY CLINTON R. MILLER, LEGISLATIVE ADVOCATE OF THE NATIONAL HEALTH FEDERATION, WASHINGTON, D.C.

Mr. Chairman and members of the committee, I am Clinton Miller, legislative advocate of the National Health Federation. I wish to make a brief oral statement, and submit a written statement for the record if I may.

Mr. Chairman, the National Health Federation is a national organization with thousands of members which was organized to help its members exercise a responsible, reasonable, and informed freedom of choice in matters of health. We believe that there is a proper and an improper role for the Federal Government to play in helping its citizens exercise this health freedom. We believe that the Federal Government should deter, if not prohibit, the sale in interstate commerce of products that are known to be harmful to human health. By the same standard, it should encourage the sale of wholesome, healthful food products. By some incredible twist, the Federal Government now seems to have reversed its proper role, and is encouraging the sale of products that are known to cause cancer, and prohibiting the sale of those which have shown the greatest promise in preventing or controlling cancer. The Federal Government has subsidized the tobacco industry, and harassed unreasonably the health foods industry. This is improper. This is wrong. This is a form of tyranny that does not breed respect of its citizens for the law. How can any just and reasonable man condone the campaign of the Federal Government's health agencies against wheat germ, carrot juice, and safflower oil, while it encourages the sale of tobacco by subsidy?

I should like to request that the chairman include in the record of these hearings the actions taken against the tobacco industry by the Food and Drug Administration, and compare it side by side against the actions taken against the health foods industry. It will show a rank injustice and maladministration of the law.

JURISDICTIONAL CONTROL

We wish to draw the attention of this committee to the lack of concern about jurisdictional control when it comes to harmless health foods. The Food and Drug Administration, the Post Office Department, the Federal Trade Commission, the Department of Agriculture, and the Department of Justice, all have jurisdiction over health foods. No one seems to be worried here about overlapping of these agencies. Indeed, they are encouraged to gang up on the health foods industry to destroy it utterly from the American scene.

Our federation office is constantly asked why the FDA, FTC, PO, and Justice Departments are so incredibly harsh upon the special dietary foods industry, and so unbelievably lenient with the tobacco, alcohol, candy, and soft drink industries.

This committee's attention is drawn to the report of the Food and Drug Administration's relentless campaign against what they choose to label "nutritional nonsense, or nutritional quackery." This report indicates that the Food and Drug Administration, at the same time they ignore any responsibility for tobacco health hazards, has used its tremendous police powers to seize and in many cases destroy completely harmless clean, wholesome, and admittedly nutritious whole wheat cookies, wheat germ cookies, watercress, kelp, parsley, honey, vinegar, yeast, liver tablets, comfrey tea, carrot juice, beet juice, celery juice, concentrated ocean water, wheat germ, soya flour, gelatin, peanut flour, egg white, dried fish flour, wheat germ oil, soy oil, rice germ oil, safflower oil, vitamin C, vitamin A, halibut liver oil, sea salt, and even health books.

In not a single case is it claimed by FDA that there was a hazard to health by these nutritious and harmless food products. Yet the Food and Drug Administration and the Federal Trade Commission and Post Office Department and Justice Department have attacked an entire industry devoted to the manufacture of these wholesome products and have ruthlessly persecuted the health foods industry while completely ignoring the interstate traffic of cancer-causing tobacco products.

If the tobacco industry has successfully lobbied against control by the Food and Drug Administration in the past, it is high time this matter was corrected by legislation. Every governmental agency that has overlapping control over harmless health foods should have the same control over the sale, advertising, and labeling of tobacco. It is incredible that they don't. When they have this power, they can then begin to enforce our laws to protect us against harmful products, and stop their whipping boy harassment of a responsible and important industry.

TESTIMONY OF THE GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS OF THE METHODIST CHURCH

Mr. Chairman, my name is Dale White. I am a clergyman, and director of the Department of Social Health of the Methodist General Board of Christian Social Concerns. My testimony today is offered as a staff member of the general board, the national agency authorized to represent Methodism as it seeks to relate the Christian Gospel to contemporary social issues.

I am here to introduce into the records of the committee the action of the General Conference of the Methodist Church, the highest legislative body in Methodism, meeting in Pittsburgh in May of this year. During that conference, Bishop Gerald Kennedy, speaking for the bishops of the church, said:

"The connection between cigarette smoking and disease is now so clear that no church can be neutral regarding this habit. We believe the body is the temple of the Holy Spirit and to profain that temple is a sin."

The general conference adopted the following resolution:

"REMEDIAL ACTION ON SMOKING

"Seriously concerned about the Surgeon General's report officially indicting cigarette smoking for thousands of early deaths from lung cancer, cardiovascular diseases, emphysema and chronic bronchitis, and related illnesses.

"And constrained by the Gospel to seek the health and well-being of all persons (the general conference) takes the following actions:

"1. We call upon all Methodists to give vigorous support to the proposed Federal Trade Commission rules prohibiting health claims in cigarette advertising,

and requiring warning statements in cigarette advertisements and on cigarette containers.

"2. We urge Methodist support of Federal and State legislation to curb abuses in cigarette advertising, to prohibit sales to minors, to require adult supervision of cigarette vending machines, to require warning labels on packages and vending machines, and to facilitate research and education on the smoking problem.

"3. We call upon our churches to plan programs to discourage junior and senior high school youth from smoking, and to organize supportive groups for youth and adults who wish to quit smoking.

"4. We challenge Methodists who smoke to consider prayerfully the weight of their influence and the total demands of Christian stewardship, and to abstain from smoking.

"5. We urge all Methodist institutions to refuse tobacco advertising in their publications, and to prohibit the free distribution or sale of tobacco products on their premises.

"6. We urge public and private health agencies, insurance companies, and educational interests to initiate an intensive public health campaign to discourage youth and adults from smoking.

"7. We support expanded research by public and private agencies to discover the specific agents in tobacco which damage health, to develop educational methods which effectively discourage youth from smoking, to discover the most helpful methods to assist those who are trying to quit smoking, and to develop plans for the orderly transition of the economies of tobacco growers, processors, and distributors.

"8. We commend the National Association of Broadcasters for their amendment to the Television Code of Ethics urging cigarette advertisers to refrain from depicting smoking as a desirable habit worthy of imitation by youth or implying that cigarette smoking promotes health or is important to personal development of youth. We urge the continuing scrutiny of television advertising by the Code of Ethics Board."

Mr. Chairman, the Christian Church has always been concerned for health and healing. Jesus Christ came preaching, teaching, and healing. The care of the sick has been a major ministry of the church through the centuries. Volunteer gifts from Christian churchmen today support literally thousands of medical services, hospitals, and nursing homes in virtually every country in the world. Believing that human life is sacred, we cannot believe that disease and suffering can ever be matters of ethical and religious indifference.

The Methodist Church has long evidenced a special concern for those afflictions caused by the social use of harmful and addicting chemical agents. Every modern industrial nation, including our own, faces a rapidly growing threat to the health of its citizens because of the use of habituating drugs in popular social rituals.

As we have not yet solved the problem of alcoholism, so now history finds us floundering for a solution to the cigarette problem. In Britain, after a massive public health program, cigarette smoking increased, and lung cancer set a new record. The recent rise in cigarette sales, in spite of common knowledge of the tragic consequences of smoking, should convince us that we have a long hard road ahead. It is inconceivable that we could feel justified in tolerating further delay.

Mr. Chairman, we are convinced that only the most vigorous program of preventive health, research, and action, with every public and private agency doing its part, can avert the quiet tragedy being enacted every day in our hospitals and nursing homes. We favor the legislative steps which may be needed to implement such a program.

(Whereupon, at 12:10 p.m. the committee recessed, subject to call of the Chair.)

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